

**ENSURING COLLECTIVE BARGAINING RIGHTS FOR  
FIRST RESPONDERS: H.R. 980, THE PUBLIC SAFETY  
EMPLOYER-EMPLOYEE COOPERATION ACT OF 2007**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON HEALTH,  
EMPLOYMENT, LABOR AND PENSIONS  
COMMITTEE ON  
EDUCATION AND LABOR  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
FIRST SESSION

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HEARING HELD IN WASHINGTON, DC, JUNE 5, 2007

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**ENSURING COLLECTIVE BARGAINING RIGHTS  
FOR FIRST RESPONDERS: H.R. 980,  
THE PUBLIC SAFETY EMPLOYER-EMPLOYEE  
COOPERATION ACT OF 2007**

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**Tuesday, June 5, 2007**  
**U.S. House of Representatives**  
**Subcommittee on Health, Employment, Labor and Pensions**  
**Committee on Education and Labor**  
**Washington, DC**

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The subcommittee met, pursuant to call, at 3:03 p.m., in room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] presiding.

Present: Representatives Andrews, Kildee, Tierney, Sestak, Hare, Clarke, Kline, and McKeon.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jody Calemine, Labor Policy Deputy Director; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Michael Gaffin, Staff Assistant, Labor; Brian Kennedy, General Counsel; Joe Novotny, Chief Clerk; Megan O'Reilly, Labor Policy Advisor; Robert Borden, General Counsel; Cameron Coursen, Assistant Communications Director; Steve Forde, Communications Director; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Legislative Assistant; Jim Paretti, Workforce Policy Counsel; and Loren Sweatt, Professional Staff Member.

Chairman ANDREWS [presiding]. Ladies and gentlemen, good afternoon. The subcommittee will come to order.

We are pleased to be joined today by our fellow committee member and distinguished colleague Congressman Kildee. He will be speaking in just a moment.

But I did want to welcome the audience to the hearing, the witnesses to the hearing.

It is a cherished and assumed right of Americans that they have the right to join or not join a union. They have the right to engage in collective bargaining, should they choose to join a union.

An employer has obligations to respect the integrity of the collective bargaining process, as does the union; that when the parties reach an agreement they have a reciprocal and equal obligation to honor that agreement; that should they choose in the agreement to establish a procedure to hear grievances about the workplace, that that grievance procedure be uniformly and fairly applied; that there be terms and conditions that establish issues about which

collective bargaining will be held and issues that are outside the purview of collective bargaining.

Whether you drive a truck or work in a retail store, teach school, build houses, Americans assume that they have these rights and can participate or not participate, as they see fit.

In my view, there is a glaring exception to this assumed right that is ironic since the glaring exception affects people who do so much for the rest of us. I have always thought that there were two categories of Americans that deserve special recognition.

One are those who serve in the armed forces, in this era who voluntarily serve in the armed forces, as each person in uniform does, and these are people who take a special and exceptional risk so the rest of us can enjoy the liberties and freedoms that we enjoy so much.

And a second category of special Americans, I believe, are those who serve in the public safety professions: those who respond to the call when we think we see a burglar in the backyard; those who answer the call of the fire siren and respond, whether it is the home of someone they know, respect, like or dislike; those who serve in the ambulance who deal with the golden hour when someone's life is either saved or lost, depending on the promptness and reliability of the people doing the work.

I find it ironic that the glaring exception that exists to the assumed right to organize affects these individuals. The evidence would show that there are a dozen states that do not provide a collective bargaining mechanism for people in the public safety professions. There are nearly two dozen states for whom the mechanism, I believe, appears to be insufficient to protect the rights that most of us assume that we have. I believe this is a glaring omission that should be remedied.

The purpose of the hearing today is to debate the pros and cons of that proposition. This is a proposition that has been introduced by Congressman Kildee with his co-sponsor Congressman Duncan that has very broad bipartisan support.

This is not an ideological position of any ideology. It is not a partisan position of either party. The legislation Mr. Kildee and Mr. Duncan have sponsored has enjoyed broad bipartisan support, and I think it is for a good reason: because that exception that I made reference to is one that many members feel should not exist.

So, today, we are going to examine this question. We are going to hear from two panels of witnesses, one that will include Mr. Kildee, the principal author of the legislation, and a second that will include people who have expertise in the field of the legal consequences of this bill and people who have expertise in the field of dealing with public safety emergencies every day of their lives and their careers. I think the panels will be informative, and we will learn much from them.

I did, before I recognize Mr. Kline, want to point out that Mr. Duncan, the other original co-sponsor of this bill, is not present today because of medical reasons, and we wish him a speedy recovery and return to Washington. He is a very respected colleague on both sides of the aisle, and we thank him for his work on this issue and hope he rejoins us quickly.

At this time, I would ask if my friend from Minnesota, Mr. Kline, would like to make an opening statement.

[The prepared statement of Mr. Andrews follows:]

**Prepared Statement of Hon. Robert E. Andrews, Chairman, Subcommittee on Health, Employment, Labor and Pensions**

Good afternoon and welcome to today's hearing entitled "Ensuring Collective Bargaining Rights for First Responders: H.R. 980, The Public Safety Employer-Employee Cooperation Act of 2007." I believe it is essential that every rank and file worker, whether public or private, enjoy certain basic rights and protections in the workplace. One of those basic worker rights, known as collective bargaining, is surprisingly withheld from many of our public safety workers today. In today's hearing, we will layout the factual predicate as to why it is necessary for Congress to provide collective bargaining rights to those public safety officers who currently do not possess them and to consider the Public Safety Employer-Employee Cooperation Act of 2007 (H.R. 980) as a legislative vehicle to provide them.

Historically, states have possessed the authority to manage their own employees. Whether their employees have or lack basic worker protections, the decision to provide these protections has been in the hands of the states. However, in our post-9/11 world, the increasing demand and pressure placed on our public safety officers warrants the need to ensure that these dedicated public servants have basic collective bargaining rights to protect their families, and their benefits during the times when their help is needed most.

The Public Safety Employer-Employee Cooperation Act of 2007 would extend the basic right to discuss workplace issues with their employers to our firefighters, law enforcement officers, emergency medical services personal and correctional officers. These brave men and women, who risk their lives each day and serve as our first line of defense against natural disasters, terrorists, criminals, medical emergencies, etc., deserve more than the status quo. The least Congress can do is provide the right for every public safety officer to meet at the table with their employer to discuss ways to improve the safety of their community and the well-being of their families. I look forward to hearing all of the witnesses' testimony today.

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Mr. KLINE. Thank you, Mr. Chairman. I will limit my opening statement and ask that my prepared statement be included as part of the record.

Chairman ANDREWS. Without objection.

Mr. KLINE. Thank you.

And I would like to, of course, welcome our friend and colleague, Mr. Kildee—I am looking forward to hearing from him and then getting him back up on this side of the room—and our panel of witnesses, quite a good panel of witnesses today, as you say, with a broad range of expertise.

I want to emphasize that, as we look at this proposed legislation, that it does have pretty strong bipartisan support, because I think that most of us recognize that what we are talking about here in this specific legislation, in this specific bill, are indeed what the chairman has called special Americans, those who are involved in attending to our safety and wellbeing on a daily basis.

But we want to look at this in the context of the larger picture. If it applies to these special Americans, this intrusion of the federal government, the labor relations of the states and local governments, would it apply to all? Certainly, I do not think the chairman was meaning to suggest that it would apply to members of the armed forces, for example.

So there are some avenues of this that we want to explore, and I am very much looking forward to the testimony and then an opportunity for questions and answers with our terrific panel.

With that, I yield back, Mr. Chairman.

[The opening statement of Mr. Kline follows:]

**Prepared Statement of Hon. John Kline, Senior Republican Member,  
Subcommittee on Health, Employment, Labor and Pensions**

Good afternoon and thank you, Mr. Chairman. I would first like to thank the Chairman for his flexibility in the scheduling of this hearing; I appreciate his willingness to move it to this afternoon so that I was able to attend, and appreciate his cooperation in that regard.

Today the Subcommittee will examine legislation that would, for the first time, interject the federal government into the labor relations of state- and local-governments, and one segment of their public employees, namely, firefighter, police, and public safety personnel.

I think it is important to remember as we begin this debate today that the question is not whether firefighters, police, and other specified public-sector employees should have the right to join unions, or whether a unionized firefighter or police force is better than a non-union one. Rather, the question simply is whether the federal government should be making that decision for each of the fifty states or whether these states and localities should maintain that right—as they have for nearly 70 years—for themselves.

To that end, I do have concern—and I recognize that this is an issue on which my colleagues on both sides of the aisle can and will, in good conscience, disagree—that H.R. 980 represents a significant and unprecedented expansion of the federal government's power into the labor relations of states, cities, and towns with their public safety workforces. H.R. 980 sets forth a list of “minimum standards” that state labor laws must meet, and charges a federal agency in Washington DC with determining in the first instance whether state laws “pass muster” under these new federal standards. If they do not, a state has one of two choices: Either change its law to meet the federal standard, or submit to the burden of federal regulation. To my mind, that is a variation on “heads you lose, tails I win”—whether directly or indirectly, the federal government will be the one setting the standards for state and local labor relations in the public safety arena.

I expect that we'll hear today from bill supporters that this bill is only a modest proposal, and that many states already have laws that they believe meet federal standards. I take that suggestion in good faith, but respectfully suggest that on its face, none of us can be sure that it is true. What we do know is that at a minimum, within 180 days of this bill becoming law, each and every of the fifty states must submit their state labor laws for review by a federal agency, which alone is charged with determining whether they meet the new federal standard. Both from a practical standpoint and as a matter of principle, this raises real concern to me. In essence, we are substituting our judgment for maybe one, maybe twenty, or maybe fifty state legislatures—in doing so, we are stepping on the right of states and localities to tailor these laws, via the democratic process, to meet their needs.

Moreover, as a practical matter, I have real questions as to how this bill will work—if a state law is found to meet the federal standard 100%, it appears that the state is free of federal regulation. What if the state's law meets 95% of the test? As I read this bill, if a state is unable or unwilling to make slight changes to their laws to accommodate that 5% variance, the federal government steps in and assumes regulation of the state's public safety workforce. That may be many things, but it is certainly not a modest, limited proposal.

Finally, I expect we'll hear from witnesses on both sides as to whether or not H.R. 980 would be found to be constitutional, or whether it unconstitutionally extends the powers of the federal government and abrogates states' sovereign rights. I doubt that the issue will be resolved today—nor do I argue that the absence of a definitive answer should prevent us from looking closely at the substance of the legislation—but I do think if we are to engage in the process of legislating in a serious and meaningful way that we need to be made aware of all the potential issues.

Mindful of the hour and the full slates of witnesses before us, with that, Mr. Chairman, I yield back my time and look forward to our witness's testimony.

Chairman ANDREWS. Thank you very much, my friend from Minnesota.

Without objection, all members will have 14 days to submit additional materials for the hearing record, including but not limited to opening statements.

It is now my pleasure to introduce a cherished member of this committee and a very good friend, Congressman Kildee.

Three things I admire most about Dale Kildee: The first is his tenacity in pursuing his deeply held beliefs. He tells stories about his father's involvement in organized labor back in the days of the auto industry in his native Michigan, which I find moving to this day. Second is he is a genial colleague who respects and is treated with respect by members of both sides of the aisle. And third, he is a very proud military parent.

Now, is it two of your sons, Dale, that have served in the armed forces of the country?

Mr. KILDEE. Two.

Chairman ANDREWS. He mentions them frequently, and having met one of them, I can see why he is so proud, and he is like a lot of other Americans that his family has served in a very special way.

So, Dale, we welcome you home to your committee and would invite you to make your statement.

**STATEMENT OF HON. DALE KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. KILDEE. Thank you very much, Mr. Chairman, and thank you, Ranking Republican Member Kline.

I would like to commend you for holding this hearing today on H.R. 980, the Public Safety Employer-Employee Cooperation Act, which would enable public safety employees to discuss work conditions with their employers.

This legislation would extend to firefighters, police officers, EMTs and other public safety officers the basic right to discuss workplace issues with their employers.

I sponsored this legislation with my friend from Tennessee, Mr. Duncan, because I feel that public safety officers who risk their lives to protect us deserve a say in decisions that affect their lives and their livelihood.

I would also like to thank the groups that we have worked with on this legislation, including the International Association of Firefighters, the Fraternal Order of Police, the American Federation of State, County and Municipal Employees and the National Association of Police Organizations.

The absence of the right to collectively bargain denies these public servants the opportunity to influence decisions that affect their work and their families. Firefighters and police officers take seriously their oath to protect the public, and, as a result, they do not engage in work slowdowns or stoppages.

Our firefighters and police officers risk their lives to keep us safe, yet there are some states in this country that deny them the basic right to discuss workplace issues with their employers, a right which many Americans have.

We should not forget that firefighters and policemen and women risk their lives every day to protect us and all of the public. At the very least, they should be allowed to negotiate for wages, hours and safe working conditions.

When I was in the state legislature in Michigan in my very first term, back in 1965, I helped pass legislation that grants all public

employees, including police and firefighters and EMTs people, the right to bargain collectively. In Michigan, this has led to a working environment that effectively protects the public that both employers and employees can be proud of.

Studies have actually found that cooperation between public safety employers and employees reduces fatalities, improves public safety services and saves the taxpayers money.

While I feel that Michigan is an excellent example of how employer and employee cooperation can benefit everyone, I do not want to impose the same structure on all states. I recognize that states may have different approaches that would be more effective for that particular state.

H.R. 980 would merely create a minimum standard that states have the flexibility to implement, regulate and enforce as they see fit. Many states, such as Michigan, have laws in place that go well beyond 980, and these states would not be affected by this legislation. Additionally, this legislation does not allow strikes or lockouts, and it preserves management rights.

Firefighters and police officers are very serious about their commitment to public safety. They deserve the basic right, Mr. Chairman and Ranking Member Kline, to sit down with their employers and discuss their work conditions. The reasonableness of this legislation is demonstrated by the wide bipartisan support it has from its 235 co-sponsors, and I urge my colleagues to join me in moving this legislation through the House.

And at that, I would yield to the next panel or, if you have questions, respond to any questions.

[The statement of Mr. Kildee follows:]

**Prepared Statement of Hon. Dale E. Kildee, a Representative in Congress  
From the State of Michigan**

Mr. Chairman, I would like to commend you for holding this hearing today on H.R. 980, the Public Safety Employer-Employee Cooperation Act, which would enable public safety employees to discuss work conditions with their employers. This legislation would extend to firefighters, police officers, EMTs and other public safety officers the basic right to discuss workplace issues with their employers.

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Our firefighters and police officers risk their lives to keep us safe. Yet there are some states in this country that deny them the basic right to discuss workplace issues with their employers—a right many Americans have. We should not forget that firefighters and police men and women risk their lives everyday to protect the public. At the very least, they should be allowed to negotiate for wages, hours, and safe working conditions.

When I was in the state legislature in Michigan, I helped pass legislation that grants all public employees the right to collectively bargain. In Michigan, this has led to a working environment that effectively protects the public and that both employers and employees can be proud of. Studies have actually found that cooperation between public safety employers and employees reduces fatalities, improves public safety services, and saves the taxpayers money.

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H.R. 980 would merely create a minimum standard that states have the flexibility to implement, regulate and enforce as they see fit. Many states, such as Michigan, have laws in place that go well beyond H.R. 980, and these states would not be affected by this legislation.

Additionally, this legislation does not allow strikes or lockouts and it preserves management rights. Firefighters and police officers are very serious about their commitment to public safety. They deserve the basic right to sit down with their employers and discuss their work conditions. The reasonableness of this legislation is demonstrated by the wide bipartisan support it has from its 235 cosponsors. I urge my colleagues to join me in moving this legislation through the House. I yield back the balance of my time.

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Chairman ANDREWS. Well, I thank our distinguished colleague for his testimony. Frankly, we have had the chance to read through the testimony. Your written testimony is on the record, without exception, and because we will have the chance to talk about it at length at other times, I would forego any questioning.

Mr. Kline, do you have a desire to question Mr. Kildee?

Mr. KLINE. No, I want to get him up here.

Chairman ANDREWS. Mr. Hare, do you have—okay.

Well, Dale, we thank you for your efforts. And please come on up to this side of the table.

Mr. KILDEE. Thank you for this opportunity.

Chairman ANDREWS. You are very welcome.

I would ask if our second panel could find their way to the front table, and we will begin momentarily.

We welcome the panel to the subcommittee. We are very appreciative of everyone giving us time.

I am going to introduce by biography the witnesses, and then we will ask each of you to make your statement.

Without objection, your written statement in its entirety will be entered in the record. We ask each of you to take 5 minutes and summarize your written statement so that we can get to questions from the members.

I will introduce the witnesses at this time.

Kevin O'Connor currently serves as assistant to the general president of the International Association of Firefighters, the IAFF, representing over 260,000 members across the United States and Canada. In this capacity, Mr. O'Connor supervises the development of policy objectives for IAFF and engages in lobbying efforts before the Congress and various regulatory agencies.

Kevin served proudly for 15 years as a firefighter-EMT in the Baltimore County Fire Department, where he saw duty both as a line firefighter and as an aide to the chief of the department. He received a commendation for bravery for a rescue during a multiple-alarm apartment fire.

He majored in political economy at Washington and Lee University and graduated from the Harvard Trade Union Program.

Kevin, welcome. It is good to have you with us.

Paul Nunziato is a police officer with the Port Authority of New York and New Jersey Police Department. Paul is a member of a bi-state police department, where he is certified as a police officer in both New Jersey and New York.

During a more than 20-year career with the Port Authority Police, Paul has worked at every command in both New York and New Jersey. He has been a member of the Port Authority Police Benevolent Association since 1987, holding various elected offices, including treasurer and currently first vice president.

Paul was involved in the evacuation effort of the World Trade Center as well as the recovery effort at Ground Zero.

Paul, welcome. Glad to have you with us.

Neil Reichenberg—did I get your name correctly, Neil? Neil is executive director of the International Public Management Association for Human Resources located in Alexandria, Virginia.

Mr. Reichenberg is the executive director of the association which focuses on public-sector human resource management, and its membership works at all levels of government. Mr. Reichenberg is responsible for the overall management of the association and has worked there for 27 years, serving as executive director since 1996.

Mr. Reichenberg is a graduate of the University of Maryland and New York Law School and is a member of the bar in New York and the District of Columbia.

Welcome. Nice to have you with us.

Mayor Wayne Seybold—is that the correct pronunciation? Mayor Seybold was elected the 29th mayor for the city of Marion in Indiana, correct, and took office on January 1, 2004.

During his administration, Mayor Seybold has worked diligently with community leaders and elected officials to recapture the quality of life, declaring, “Make it Marion,” by enhancing the quality of life and community pride, by providing an aesthetically clean environment, a strong economic foundation and a marketable future for the community.

I do not think we can say this about any witness we have ever had here, Mayor, that prior to running for office, Mayor Seybold began his career with his sister, Kim, as a figure skating pair in the 1988 Calgary Olympics, a real achievement.

Most of us probably could not stand up in an ice skating rink. I should not say that about my friend from Minnesota.

[Laughter.]

But it is good training for mayor, I guess, to be able to dodge and weave around various things.

Our next witness is R. Theodore Clark, Jr., who is a partner in the very fine firm of Seyfarth Shaw based in Chicago. Mr. Clark is a partner and practices public-sector labor relations law at that firm. He is also an adjunct professor in public-sector labor relations law at Northwestern University Law School.

Mr. Clark has served as a consultant to the Illinois governor's advisory commission on labor management policy for public employees, as a part-time faculty member for courses on public employee labor relations for the Graduate School of Public Administration at the University of Southern California, and as a lecturer on labor law and legislation at DePaul University.

Mr. Clark has also served as a member of the board of directors of the Legal Assistance Foundation of Chicago and is on the advisory committee of the Illinois Educational Labor Relations Board.

Welcome, Mr. Clark. We are glad that you are with us.

And finally, Professor William C. Banks is recognized internationally as an expert in constitutional law, national security law and counterterrorism.

Since 1987 when the Federation of American Scientists asked him to provide a legal perspective on first use of nuclear weapons, Professor Banks has helped set the parameters for the relatively new field of national security law.

He is a graduate of the University of Nebraska and the University of Denver, where he earned his J.D. degree and a master's in law and society.

Mr. Banks joined the faculty of the Syracuse University College of Law in 1978. He became the founding director of the Institute for National Security in Counterterrorism at Syracuse in 2003. He also served as special counsel to the United States Senate Judiciary Committee in 1994. Mr. Banks worked on the committee on the confirmation hearings for Supreme Court nominee Stephen G. Breyer.

Welcome very much.

This is a great panel. We look forward very much to hearing your testimony.

One final word about the light box that is in front of you. As I said, your statements have been entered into the record in their entirety, the written statements, and we do ask you to give us a synopsis of 5 minutes so the panel can hear you.

When the yellow light goes on, you have 1 minute remaining in your 5 minutes, and we would ask you to wrap up when you see the red light on, out of courtesy to your fellow panelists and to the members of the committee.

We will begin with Mr. O'Connor.

I did want to mention, since we have the record here, that a friend and colleague of ours, Tom Canzanella, president of New Jersey IAFF, is critically ill, suffered a brain aneurysm, as we understand, at the end of last week, but I know that the prognosis is good the last I heard.

And I hope that you would pass along to Tom and his family and his brotherhood in the IAFF that we wish him the best.

Mr. O'CONNOR. We will do that, Mr. Chairman. I want to thank you for your phone call over the weekend. It meant a lot to Tom's family and to our members in New Jersey. We very much appreciated your offer to help.

Chairman ANDREWS. Well, you are welcome. And our insistence is that when Tom recovers, he should be a witness before us at one of these hearings.

Mr. O'Connor, you are recognized.

**STATEMENT OF KEVIN O'CONNOR, ASSISTANT TO THE GENERAL PRESIDENT, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

Mr. O'CONNOR. Thank you very much, Mr. Chairman, Ranking Member Kline and members of the committee. I appreciate the very generous introduction.

I would like to note that it is my honor today to represent the now 283,000 members of the International Association of Fire-

fighters, who risk their lives every day serving America's communities.

I would also like to note, in addition to being a career firefighter in Baltimore County for 15 years, I also very proudly served as a volunteer in that very same jurisdiction.

During my years as a local union officer and 9 years as president of Local 1311, I had the opportunity to bargain 10 contracts that measurably improved the delivery of service and improved safety for firefighters serving in Baltimore County.

H.R. 980 is about two things: fundamental fairness and creating a structured process in which public safety officers and their respective governmental employers can meet and discuss workplace safety and security issues.

Let me begin by first addressing the issue that is most pressing to our nation, and that is homeland security. Since 9/11, a day of infamy that claimed the lives of 343 of my brother firefighters, the public has developed a new respect for the vital work of firefighters and our integral role in protecting homeland security.

Mr. Chairman, after reading everyone's written testimony, I think that everyone on this panel agrees on one thing: We support collective bargaining rights in general. It is also not disputed that this process, provided through 50 separate individual state laws, will measurably improve emergency services and public safety. Post-9/11, Americans have a right to the homeland security dividend that collective bargaining pays.

If, and only if, states choose not to provide this valuable homeland security tool and to preserve their own individual state's rights, it becomes a job of this Congress to set minimum standards to make both firefighters and the general public safer.

First responders are, indeed, the nation's first line of defense against terrorist attacks and natural disasters. We are the first on every emergency scene and the very last to leave.

To do our jobs effectively and safely, we need a seat at the table. We need to be able to discuss response issues, engage in meaningful dialogue about the equipment, staffing and processes required to protect the jurisdictions which we so proudly serve. Simply put, collective bargaining is an appropriate and necessary vehicle to facilitate those goals.

Years ago, many elected officials looked at public safety issues as the exclusive purview of local governments and felt that this issue should be left to the states. Since the creation of FEMA in 1979, the federal government has assumed a growing and increasingly supervisory role in local public safety issues, and since 9/11, the connection between federal, state and local government has become totally entwined.

The federal government has mandated basic levels of training in response standards. It has instituted the National Response Plan and created the National Instant Management System. To ensure more effective response to manmade and natural disasters, the federal government has greatly expanded their support of the Urban Search and Rescue Program, a fantastic example of cooperation between federal, state and local response providers.

Therefore, it is a very logical progression for the federal government to ensure a process by which local government and first re-

sponders can meet and discuss those important safety and homeland security issues, and that process is collective bargaining.

Since the 1930s, all private-sector employees have enjoyed the right to collectively bargain. The workers who build our firetrucks and manufacture equipment can collectively bargain, but tens of thousands of men and women who risk their lives every day cannot. There is something wrong with that equation.

H.R. 980 provides us a seat at the table, nothing more. The measure is designed to encourage each state to craft its own statute to govern bargaining processes for their public safety employees.

Provided that four simple conditions are met, the federal government adopts a hands-off posture. Those conditions are: one, a mechanism for employees to determine whether or not they wish to be represented; two, a formalized process for management and labor to meet and discuss terms and conditions of employment; three, a non-binding dispute mechanism process; and, four, the ability to enter into legal binding contracts if—and I emphasize if—an agreement is reached.

Provided that states substantially comply with those four caveats, the federal government has no further role in that state. If, however, a state refuses to enact its own law, the Federal Labor Relations Authority would issue regulations that would, in fact, become that state's bargaining law for public safety officers.

Recognizing that we are dealing with public funds and local government's fiscal authority, jurisdictions are never compelled to reach an agreement. At the end of the day, local government controls the purse strings and can simply say no.

H.R. 980 mandates a process, not an outcome. This bill presents a rare opportunity to create a process that will both improve emergency service and provide a voice in the workplace for our country's dedicated first responders.

On behalf of our nation's first responders, including those in law enforcement represented by the FOP and other organizations, I thank you very much for this opportunity to testify, and we would be delighted to answer any questions for the committee.

[The statement of Mr. O'Connor follows:]

**Prepared Statement of Kevin O'Connor, Assistant to the General President,  
International Association of Fire Fighters (IAFF)**

Chairman Andrews, Ranking Member Kline, and distinguished members of the Subcommittee. My name is Kevin O'Connor and I am the Assistant to the General President of the International Association of Fire Fighters (IAFF). I am pleased to have the opportunity to appear before you today on behalf of General President Schaitberger and the 283,000 men and women who comprise the IAFF.

Before I begin, allow me to express my appreciation to you, Mr. Chairman, for holding this hearing on this very important topic. You have a long, distinguished history of championing the issues of concern to America's fire fighters. Your leadership as Co-Chair of the Congressional Fire Services Caucus is recognized and appreciated by both the career and volunteer fire services. I am looking forward to working with you and the committee in the coming weeks as this legislation moves forward. And I would be remiss if I did not also commend the extraordinary leadership of the author of this legislation, Representative Dale Kildee. Representative Kildee first introduced this bill a dozen years ago, and has remained its most steadfast champion. The nation's fire fighters and law enforcement officers are indebted to him.

Mr. Chairman, I appear before you today not only as a representative of the IAFF, but also as someone who understands from first hand experience the significance

of this issue. I spent my entire adult life in the fire service, starting as a volunteer fire fighter, serving for 15 years as a professional fire fighter and E.M.T. in the Baltimore County, Maryland Fire Department, and serving for 9 years as President of my local union, the Baltimore County Fire Fighters Association and 6 years as President of the 7,500 member Maryland State and District of Columbia Fire Fighters Association. From this vantage point, I not only know what it's like to work as a fire fighter, I also know just how much can be achieved through the bargaining process.

I have many memories of those years sitting across the bargaining table negotiating with five different Fire Chiefs and four County Executives—three Democrats and one Republican. Obviously, we had areas of disagreement and agreement. I had some successes and my share of defeats. But the one thing I am absolutely certain of, and to which those Chiefs and County Executives would no doubt agree, is that the citizens of Baltimore County are safer today because of what we achieved together. It was a structured, cooperative process that benefited both the 700,000 tax-paying citizens of Baltimore County, and the members of the Baltimore County Fire Department.

#### *Fundamental Fairness*

In essence, this hearing is about fundamental fairness for fire fighters and police officers. Today, the vast majority of American workers—private sector employees, non-profit association employees, transportation workers, federal government employees, and even congressional staff—have the right to bargain collectively. As I listened to the debate earlier this year over the Employee Free Choice Act, I was struck by how universally acknowledged the right to bargain has become. While people can, and do, argue over many of the details of labor law, few voices can be heard questioning the fundamental right of employees to discuss how they do their jobs with their employers. I find it noteworthy that the most recent group of employees to gain collective bargaining rights owe this right to the conservative 104th Congress led by House Speaker Newt Gingrich and Senate Majority Leader Bob Dole. As a result of a key provision of the Contract with America, the Capitol Police Force who are protecting us here today enjoy collective bargaining rights.

I also note that the National Association of Counties, one of the largest organizations representing the employers with whom we negotiate, has expressly endorsed collective bargaining for all non-supervisory employees as a means to promote “positive labor-management relationships” and “provide workers with safe and meaningful employment.”

Despite this near-universal acceptance of the right to bargain, tens of thousands of our nation’s fire fighters and police officers on the frontlines of homeland security are unfairly denied this basic protection. In too many states, first responders are prevented from having a conversation with their employer about how to improve fundamental services and protect the public. Let me be clear: this is not about the ability to strike, which H.R. 980 expressly outlaws. No first responder that I know believes in strikes—it contradicts what protecting the public safety means. Nor is it about union organizing, since the IAFF already represents over 85% of fire fighters nationally—including those in Right to Work states. In fact, we may be the only national union that does not even have an organizing department.

This is about fundamental fairness: the right to talk about how to best protect the public safety should be provided to the first responders who risk so much to keep our nation safe.

#### *Collective Bargaining in the Public Safety Arena*

Perhaps in no occupation is the need for collective bargaining greater than in public safety. Fire fighting is the nation’s most dangerous profession. One-third of our members are injured in the line of duty each year. In 2007, approximately 100 of my brothers and sisters will pay the ultimate price. Thousands of times today, in every corner of America, an alarm will ring in a firehouse and men and women will bravely place themselves in harm’s way.

Fire fighters take these risks for one reason: we are dedicated to protecting the health and safety of our neighbors and our communities. It is this same dedication and commitment to public safety that we bring to the bargaining table. The issues that are of paramount importance to us are often not things such as wages and benefits, the traditional subjects of bargaining. Rather, we are focused on how we can do our jobs better and more safely and improve the level of service that we provide to our communities.

Frontline emergency responders often view public safety through a different lens than public safety directors or city managers. We are the ones who rush into the burning buildings, dive into frigid waters, and perform countless rescues each year.

We believe we have a valuable perspective to share, and I am here today to ask you to grant us a seat at the table.

*Effective Local Emergency Response is a Cornerstone of Homeland Security*

September 11, 2001 demonstrated the courage and sacrifice of our fire fighters and police officers. On that tragic day, I lost 343 of my brother fire fighters, each of whom was a union member who enjoyed collective bargaining. I should note that even though they were working without a ratified contract, these dedicated fire fighters performed beyond the call of duty and made the ultimate sacrifice. All first responders place duty above all else. With or without collective bargaining, we will always place serving the public as our first and foremost priority.

But September 11 was not just a day of tragedy and heroism. It also fundamentally changed the way our nation views emergency response. Prior to 9/11, public safety was viewed almost exclusively as a local government function. No more. Americans now universally understand that homeland security is a vital federal government responsibility. And effective local emergency response is a cornerstone of homeland security. Homeland security starts with hometown security.

Thus, the federal government embarked on the creation of a new security paradigm that embraces active federal government involvement in local emergency response preparedness. The importance of this new paradigm was further highlighted when a devastating hurricane in the Gulf Coast took hundreds of lives and stretched emergency response capabilities to the breaking point.

Following the issuance of Homeland Security Presidential Directive-8 (HSPD-8), which declared it a federal responsibility to "strengthen preparedness capabilities of Federal, State, and local entities," Congress and the Executive Branch worked together to create a network of programs that permanently linked federal and local response activities. These initiatives are manifested in the National Response Plan, the National Preparedness Goal, the National Incident Management System, in the coordination of several training and exercise programs including TOPOFF (a series of exercises designed to help states and localities gain an objective assessment of their capacity to prevent or respond to and recover from a disaster), and in related guidance to states in aligning state homeland security strategies with the National Preparedness Goal. Through these executive and statutory precedents, and combined with \$18 billion in grants to state and local governments since 9/11, the federal government has articulated that an effective emergency response at the local level is a fundamental building block of homeland security, critical to "strengthen preparedness capabilities."

It is therefore surprising and somewhat disappointing to hear some argue that it is inappropriate for the federal government to ensure that emergency responders have a voice in the workplace. Some of those who today oppose any federal involvement in ensuring that fire fighters have the opportunity to raise safety issues with their employer are the same people who gave speeches on the floor of the U.S. House of Representatives lauding their heroism following the 9/11 attacks.

Ensuring the ability of emergency responders to work cooperatively with the local officials who manage emergency response is every bit as much a legitimate federal government responsibility as any homeland security initiative Congress has undertaken in the past five years.

*Public Safety Collective Bargaining Works*

Studies have consistently shown that collective bargaining in the public sector improves the delivery of emergency services. The Secretary of Labor's Task Force on Excellence in State and Local Government, a national bi-partisan study group evaluating means to improve delivery of state and local government services, found in 1996 that "collective bargaining relationships, applied in cooperative, service-oriented ways, provide the most consistently valuable structure for beginning and sustaining workplace partnership with effective service results."

Real world examples abound to verify these findings. Almost every day in almost every corner of America, representatives of frontline fire fighters are sitting down with their fire chief or public safety director to discuss how to do their job more effectively and more safely.

The Phoenix, Arizona Fire Department is recognized as one of the preeminent fire departments in the world, a status achieved largely through labor-management cooperation. According to Chief Dennis Compton, who also served as the President of the International Association of Fire Chiefs: "A positive labor/management process can form the foundation for planning and problem-solving in a fire department. When labor and management leaders work together to build mutual trust, mutual respect, and a strong commitment to service, it helps focus the fire department on what is truly most important \* \* \* providing excellent service to the customers and

strong support to the members who serve them. I know this is possible because for 32 years, I had the honor of serving in two fire departments in Phoenix and Mesa, Arizona who transformed this concept into reality. The labor/management process established in the Phoenix Fire Department in the early 1980's is the principal reason that the organization has earned an international reputation as arguably the most effective public safety organization in the world."

In Kansas City, Missouri, the Labor-Management Committee works together to address almost all the significant operational issues facing the Fire Department. In recent years, the Committee created a joint plan that identified areas of greatest need, and—just as significantly—identified possible funding sources to help meet those needs. The result has been an increase in both staffing and apparatus, with minimal drain on local treasury. Kansas City Chief Richard "Smokey" Dyer, also a past president of the International Association of Fire Chiefs, echoes Compton's views: "I've been a Chief in departments with collective bargaining and without. The bargaining process is, by far, preferable because it establishes structured processes in which we can jointly address safety, service delivery and other issues impacting public safety."

In New York City, a five-year collective bargaining agreement was ratified last year that included a long-term solution to FDNY's staffing shortage. The density and large number of high rise buildings in New York pose unique problems for the city's emergency response agencies. The agreement will enable the Fire Department to more effectively respond to the extraordinarily labor-intensive tasks required to perform rescue operations in that challenging urban environment.

In Hennepin County, Minnesota, the local fire fighters union conducted extensive research into ambulance and stretcher designs after city paramedics began complaining of back and neck problems. The union made recommendations to purchase new ambulance suspensions and ergonomic stretchers, but the Fire Department balked because it didn't have sufficient budgetary authority. So the union worked with management through the collective bargaining process to examine the purchases in the overall context of workers compensation, disability benefits, and sick leave. The result was an agreement that allowed the city to purchase the newer technology, resulting in healthier paramedics and a savings to taxpayers.

In Omaha, Nebraska, collective bargaining has produced measurable staffing and health and safety improvements throughout the Fire Department resulting in safer fire fighters and a safer community. Before collective bargaining, the Omaha Fire Department lost one fire fighter in the line of duty every five years. Since fire fighters were provided with a means to provide input about health and safety aspects of their jobs, they haven't lost a fire fighter in the last twelve years. This was achieved by increasing staffing to meet national consensus standards for safe fireground operations, and by securing enclosed cabs on fire trucks. The bargaining process in Omaha also has also addressed the dangerous health hazards posed by asbestos at fire stations and provided hearing protection for fire fighters.

In Miami, Florida, the local fire fighter union was able to offer data that persuaded city leaders to establish one of the nation's foremost fire department-based EMS delivery models. The EMS system, which has now been working effectively for several years, reduced response times and reduced costs to taxpayers. Based on the Miami experience, the model has been adopted by several other fire departments. In almost every instance, the new system was a joint labor-management initiative. According to Miami Fire Chief William Bryson "The bottom line is collective bargaining worked to improve services in our city."

From my own experiences in Baltimore County, through our bargaining process we established a labor/management, a quality of work life, and safety and health committees. Collectively, these committees assisted the department in evaluating our response profiles and levels of service, selecting the appropriate breathing apparatus, turnout clothing and other safety equipment, abating diesel exhaust emissions in our 26 stations, developing a wellness and fitness initiative and cooperatively taking over a 55 member private-industrial fire department and integrating their personnel and emergency operations into the Baltimore County Fire Department.

And in your District, Ranking Member Kline, in Chaska, Minnesota, the city's fire department stepped up to provide certified ambulance service when a previous emergency service provider failed to meet the city's public safety standards. Aided by a collective bargaining process, the Fire Department earned the necessary certification and assumed the responsibility of providing effective paramedic services to the citizens of Chaska.

Such examples are just a few of the literally thousands of beneficial public safety initiatives that have been achieved through labor-management cooperation.

Moreover, just as there are countless examples of the benefits of collective bargaining, there is also ample evidence that the absence of a bargaining relationship is the source of significant problems. At its most fundamental level, collective bargaining is simply a process for resolving disputes. Without such a process in place, disputes often find other outlets that sometimes prove dangerous and costly. An absence of collective bargaining for fire fighters and police officers is, at a minimum, a missed opportunity to improve the delivery of emergency services.

Consider the case of Dean Bitner, President of the Springdale, Arkansas Professional Fire Fighters. Without the ability to bring issues to the bargaining table, Bitner took his concerns about understaffing and inadequate fire protection to the city council. The fire department retaliated by passing over Bitner for promotion to Captain, despite his having the highest scores on the civil service exam. When Bitner filed suit alleging violation of his first amendment rights, he was demoted and removed from a pension committee. And when he asked the Fire Chief why he was not allowed serve on the pension committee, he was promptly fired for insubordination.

In the face of these unwarranted assaults on his rights, a federal court ordered the city to reinstate Bitner and promote him to Captain. But that was only the beginning. The court also awarded Bitner hundreds of thousands of dollars in damages including back wages and compensatory damages, and ordered the city to pay Bitner's attorneys' fees.

A similar story took place in LeMay Township, Missouri. Fire fighter David Foote was fired for telling a meeting of the local Republican Party (of which he was an active member) about the fire department's refusal to replace unsafe personal protective gear. Like Bitner, Foote had to file suit to obtain justice. He was ordered to be rehired and awarded in excess of \$400,000 in damages.

Dean Bitner and David Foote are not alone. IAFF attorneys have handled over a dozen first amendment cases in non-bargaining states in recent years, every single one of which resulted in taxpayers being forced to pay large settlements to fire fighters who were wrongfully fired or disciplined for expressing their views.

But the lesson of these cases is not just that cities have wasted time and millions of taxpayer dollars. The more significant lesson is that lawsuits and politics are a poor substitute for collective bargaining. Had Bitner and Foote had the opportunity to raise their concerns in a collective bargaining environment, and had the jurisdictions of Springdale and LeMay Township had an established process for resolving grievances and appealing disciplinary actions, none of this would have occurred. Both the localities and their fire fighters could have spent their time, energy, and money where it belongs—on protecting the public safety.

Not surprisingly, the problems associated with the absence of a bargaining relationship take their toll on employees. The inability to bring important workplace issues to the attention of management harms morale, and can undermine the esprit de corps essential in public safety occupations. This is especially true in communities where fire fighters without bargaining rights engage in mutual aid responses alongside fire fighters who are protected by bargaining laws. The disparate treatment is painfully obvious to those denied a voice in the workplace, and we have witness high rates of turnover in many of these fire departments. Ultimately, these morale problems jeopardize public safety.

#### *The Public Safety Employer-Employee Cooperation Act (HR 980)*

In order to ensure that collective bargaining is universally available to those public safety officers who want it, Representative Kilde worked with the IAFF, FOP, and other organizations representing law enforcement officers to craft the Public Safety Employee-Employer Cooperation Act. Let me say first that we don't call it the Cooperation Act for nothing. The heart of the bill is promoting cooperation between public safety employers and employees whose relationship is critical to the effective delivery of emergency services. The purpose of this bill is to have fifty state laws that give fire fighters and police officers access to a bargaining process that fosters cooperation between public safety officers and the agencies that employ them, a process that is working well in 30 states and creating an atmosphere in which all parties are stakeholders in improving safety and making communities more secure. Rather than imposing a single federal labor relations law on states, the goal of this legislation is to have fifty state laws that are written by states and administered by state agencies.

To accomplish this, the legislation establishes four minimum standards: the right to form and join a union; the right to bargain over working conditions; the right to sign legally enforceable contracts; and the right to utilize an impasse resolution procedure. The impasse mechanism does not need to be binding on the parties. For example, many states use mediators or fact-finders to help resolve disputes.

Just as important as what the bill requires, is what it does not require. It does not require binding arbitration to resolve disputes; does not allow public safety officers to strike; does not take away authority of states and local jurisdictions to have ultimate say over all public safety and financial issues; does not require any specific method to certify unions; does not interfere with state “right-to-work” laws; and does not infringe on the rights of volunteer fire fighters.

The bill tasks the Federal Labor Relations Authority (FLRA), an entity with unparalleled expertise in public sector labor relations, to review state collective bargaining laws to see if they meet the minimum standards previously described. In states that already have a bargaining process that works to keep the public safe, as a majority of states do, there would be no further role for the federal government.

The minority of states that do not meet these minimum standards would have two years to enact their own public safety collective bargaining law that could be tailored to meet the emergency service needs of each state. The bill gives the utmost flexibility to states in crafting their own collective bargaining law so they can best use this tool to augment emergency response capability across their states. Once state legislation is enacted, FLRA would review it to determine whether it comports with the minimum standards.

Those states that decline the opportunity to author and administer their own collective bargaining law would be subject to regulations promulgated by the FLRA. The regulations would function as labor law in the state, and the agency would serve as the labor board for public safety employers and employees. Once a state subsequently adopts a bargaining law for public safety that complies with H.R. 980’s minimum standards, the FLRA’s authority immediately dissolves.

It is our hope and our belief that every state that has not already done so will take this opportunity to enact their own unique state bargaining law for fire fighters and law enforcement officers. Because the legislation leaves almost all the most significant labor issues to the states to resolve, we are confident that states will find ample incentive to enact and administer their own public safety collective bargaining law rather than come under federal authority.

#### *Evolution of the Cooperation Act*

The legislation before you today embodied in HR 980 is the result of many years of study, refinement and compromise. Since the IAFF first identified this legislation as our top priority, we have worked with both supporters and opponents of the legislation to attempt to address all concerns.

Earlier versions of the legislation contained a much longer list of standards that states must meet. It was Senator Judd Gregg, the long-time sponsor of the Senate version of the legislation, who encouraged us to pare down the criteria to the most minimal level.

We also added language expressly addressing concerns raised by supporters of “right to work” laws and volunteer fire fighters to make sure the Cooperation Act in no way conflicted with their goals.

Some Members of Congress who represent smaller jurisdictions raised concerns about the impact on small town America, which prompted us to agree to language allowing states to exempt small communities.

We extended the timeline for states to act, in recognition of the fact that many state legislatures meet only certain months of the year, and must plan for the consideration of major legislation well in advance.

And we worked closely with attorneys to assure that the bill comports with United States Supreme Court decisions. In light of the new, expansive federal role in Homeland Security, we do not believe any constitutional challenge would succeed. But we wanted to be sure our bill would withstand constitutional scrutiny based on precedent that did not consider recent homeland security enactments. I have attached to my statement a memo from an attorney explaining how the legislation was crafted consistent with Supreme Court precedents.

In sum, we are confident that the bill before you today addresses all legitimate, pragmatic concerns. It is through these efforts that the bill has come to the point where it enjoys such broad, bipartisan support. The legislation has already been co-sponsored by a majority of the House of Representatives, as well as a majority of this committee. And the list of sponsors spans a wide cross-section of ideology and geography. We are proud that HR 980’s supporters range from some of the most conservative Republicans to the most liberal Democrats. It is a common sense proposal that engenders support across all spectrums.

#### *Impact on States and Localities*

Despite the far reaching significance of this legislation, HR 980 would impose at most a minimal burden on the overwhelming majority of states. As noted above,

most states would be completely unaffected because they already fully comply with the minimum requirements of the legislation. But even in many of the states that do not currently comply, coming into full compliance would be relatively simple and inexpensive.

Many states without a statewide law provide bargaining for public safety officers through local ordinances. HR 980 specifically protects these local laws by limiting the authority of the FLRA to enforce its regulations in cities and counties that meet the minimum requirements of the bill. States that have strong local laws would therefore retain their ability to pass the decisions about bargaining procedures to their localities.

Some states already have strong statewide laws that apply exclusively to fire fighters, and these states would have the option of either extending their existing law to other public safety employees or retraining their fire fighter-only law, while allowing FLRA to manage labor relations in other sectors.

And some states have a bargaining process but bar their courts from enforcing agreements. Simply requiring local agencies to live up to agreements they freely reach should not impose an undue burden.

#### *Local Government Maintains Ultimate Control*

At the end of the day, HR 980 does not require public agencies to reach any agreement or spend any money it does not believe is in the best public interest. There is nothing in the bill that infringes on the ability of government agencies to manage public safety operations however they see fit.

The bill does, however, require public safety employers to meet with the representatives of emergency responders to consider their views. In light of the fact that these domestic defenders are on the front lines in our nation's homeland security, Congress is fully justified in insisting that state and local officials sit down and talk.

But ultimately, government agencies retain the unfettered ability to simply say "NO" to any union proposals.

#### *Conclusion*

Since the days of the sweatshop environments that dominated our nation's factories at the beginning of the last century, collective bargaining is largely responsibility for virtually all the reforms that have transformed the way Americans view work. In terms of public safety, collective bargaining has already transformed the emergency services of the majority of states in the nation, making safer our public safety officers, our communities, and our nation.

Collective bargaining is overwhelmingly used as a mechanism to enable labor and management to work together for their mutual benefit. The bill promotes conversation between public safety employer and employees. More than anything else, HR 980 establishes a process but does not mandate an outcome. Nowhere is this relationship more important than in the delivery of emergency services when lives are at stake. The right to be heard at work—collective bargaining—is a fundamental right, just as the public's right to depend upon emergency services is a fundamental right.

The Cooperation Act is about fairness and security—nothing more. Allow us a voice. Allow us a seat at the table. The enactment of HR 980 will protect both our first responders and the communities we serve, and make our nation safer and more secure.

I appreciate the opportunity to appear before this subcommittee and would be happy to answer any questions you may have.

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Chairman ANDREWS. We thank you very much, Mr. O'Connor.  
And we welcome Mr. Nunziato. Welcome to the committee.

#### **STATEMENT OF PAUL NUNZIATO, POLICE OFFICER, NEW YORK/NEW JERSEY PORT AUTHORITY**

Mr. NUNZIATO. Thank you. Good afternoon, Chairman Andrews, Ranking Member Kline and members of the subcommittee. My name is Paul Nunziato, and I am a police officer with the Port Authority of New York and New Jersey Police Department.

I also serve as vice president of the Port Authority Police Benevolent Association, which is a member organization of the National Association of Police Organizations, NAPO. NAPO represents ap-

proximately 238,000 sworn law enforcement officers throughout the United States.

State and local public safety officers play a crucial role in our nation's counterterrorism and homeland security efforts. They are the first to respond to terrorist attacks, natural disasters and other mass casualty events as evidenced by the tragic events of September 11.

Congress has long recognized the benefits of a cooperative working relationship between labor and management. Over the years, Congress has extended collective bargaining rights to public employees, including letter carriers, postal clerks, public transit employees, and even congressional employees.

However, under current federal and state laws, some public safety employees, including law enforcement, corrections, and fire, are denied the basic rights of collective bargaining. Law enforcement officers put their lives on the line every day to preserve our security and peace that our nation enjoys. It is wrong that many of these same officers are denied the basic American rights of collective bargaining for wages, hours and safe working conditions.

I believe that collective bargaining rights are crucial to the protection and health and welfare of the public safety officers and their families. I base that upon my own experience as a police officer working for an agency directly impacted by the worst terrorist attack in this nation's history.

On September 11, 2001, the World Trade Center, the headquarters of the Port Authority of New York and New Jersey and worldwide symbol of New York and America, was attacked. Only 10 Port Authority police officers were working at the World Trade Center police command at the time of the terrorist attacks on September 11.

Within minutes of the attacks, police officers from throughout our job mobilized from all 13 police commands to respond to the attacks. I myself responded from home and was mobilized from my command, PATH, a subway system running between New York and New Jersey.

Of the 23 members of my roll call at the PATH police command that day, 10 came home. The Port Authority Police Department suffered the worst single day loss of life of any law enforcement agency in the history of the United States.

Despite the tremendous risks, I can definitively state that no Port Authority police officer refused an order to respond to the World Trade Center or enter the towers on September 11.

Unfortunately, I have direct knowledge that our collective bargaining agreement provides security to our members and their families. My partner, Donald McIntyre, was one of the 37 members of my police department who lost their lives in the World Trade Center evacuation effort. Donnie was married with two young children. His wife, Jeannine, was pregnant with a third child. Nothing could make up for the loss of Donnie to his family and that void will never be filled.

But as a vice president of my union, it pleases me to see that Jeannine does not have to worry about paying bills or providing health care for her children due in large part to the benefits my union has negotiated for our membership.

I also want to take this opportunity to address members of this committee and the Congress who believe that granting collective negotiation rights to police officers represents a danger to national security.

The vast majority of the then 1,000 police officers in my agency worked steady 8-hour tours on a 4-day-on-2-day-off schedule. We had up to 6 weeks of vacation and additional personal leave time. By the end of the day on September 11, the Port Authority Police Department switched every member in my department to 12-hour tours, 7 days a week. Vacation and personal leave time were cancelled.

My union did not file any grievances regarding these changes. Everyone recognized this was a crisis and emergency measures needed to be resorted to. Our schedule did not return to normal for nearly 3 years.

The bottom line is that, even in states with long and strong histories of collective negotiation rights for public safety personnel, management retains discretion to respond to emergencies and potential security risks without negotiation with employees.

As the health risks associated with exposure to the World Trade Center site following 9/11 become more manifest, I am protected by my union's efforts to ensure that workers in the rescue and recovery effort are properly monitored and treated for exposure-related diseases that do occur.

Employers cannot be permitted to act unchecked because they do not place workers' interests first. For example, the city of New York has repeatedly denied that any of its police officers, firefighters, EMS personnel or other city workers were sickened by exposure to the World Trade Center site.

My own agency has resisted classifying legitimate exposure diseases as injuries in the line of duty. I was exposed that day and continued to be exposed for more than 1,000 hours in the months afterwards as part of the Ground Zero recovery effort.

It is time for the Congress to step up to the plate and act in a comprehensive fashion to mandate collective bargaining in states which do not have it. This legislation would allow law enforcement officers to negotiate on working conditions, to seek better salaries, benefits and training, to protect their families and the public. Most importantly, it would allow public safety officers to negotiate the necessary protections that will permit them to walk unselfishly into the line of fire to save the lives of our fellow citizens.

Thank you for this opportunity to speak to you on behalf of America's rank-and-file law enforcement officers.

[The statement of Mr. Nunziato follows:]

**Prepared Statement of Paul Nunziato, Vice President, Port Authority Police Benevolent Association, Member, National Association of Police Organizations (NAPO)**

Good Afternoon Chairman Andrews, Ranking Member Kline, and members of the Subcommittee. My name is Paul Nunziato and I am a Police Officer with the Port Authority of New York and New Jersey Police Department. I also serve as the Vice-President of the Port Authority Police Benevolent Association (PBA), which is a member organization of the National Association of Police Organizations (NAPO). NAPO represents approximately 238,000 sworn law enforcement officers throughout the United States.

State and local public safety officers play a crucial role in our nation's counterterrorism and homeland security efforts. They are the first to respond to terrorist attacks, natural disasters and other mass casualty events as evidenced by the tragic events of September 11th.

Congress has long recognized the benefits of a cooperative working relationship between labor and management. Over the years, Congress has extended collective bargaining rights to public employees including letter carriers, postal clerks, public transit employees, and even Congressional employees. However, under current federal and state laws, some public safety employees, including law enforcement, corrections, and fire, are denied the basic rights of collective bargaining. Law enforcement officers put their lives on the line every day to preserve the security and peace that our nation enjoys. It is wrong that many of these same officers are denied the basic American rights of collective bargaining for wages, hours, and safe working conditions.

I believe that collective bargaining rights are crucial to the protection of the health and welfare of public safety officers and their families. I base that upon my own experience as a police officer working for an agency directly impacted by the worst terrorist attack in this nation's history. On September 11, 2001 the World Trade Center, the headquarters of the Port Authority of New York and New Jersey and worldwide symbol of New York and America was attacked.

Only 10 Port Authority police officers were working at the World Trade Center police command at the time of the terrorist attacks on September 11th. Within minutes of the attacks, police officers from throughout our job mobilized from all thirteen police commands to respond to the attacks. I myself responded from home and was mobilized from my command, PATH, a subway system running between New York and New Jersey. Of the 23 members of my roll call at the PATH police command that day, 10 came home. The Port Authority Police Department suffered the worst single day loss of life of any law enforcement agency in the history of the United States. Despite the tremendous risks, I can definitively state that no Port Authority police officer refused an order to respond to the World Trade Center or to enter the towers on September 11th.

Unfortunately, I have direct knowledge that our collective bargaining agreement provides security to our members and their families. My partner, Donald McIntyre, was one of 37 members of my police department who lost their lives in the World Trade Center evacuation effort. Donnie was married with two young children; His wife, Jeannine, was pregnant with a third child. Nothing could make up for the loss of Donnie to his family and that void will never be filled. But as a Vice-President of my union, it pleases me to see that Jeannine does not have to worry about paying bills or providing healthcare for her children due in large part to the benefits my union has negotiated for our membership.

I also want to take this opportunity to address members of this Committee and the Congress who believe that granting collective negotiation rights to police officers represents a danger to national security. The vast majority of the then 1,000 police officers in my agency worked steady 8 hour tours on a 4 day on 2 day off schedule. We had up to 6 weeks of vacation and additional personal leave time. By the end of the day on September 11th, the Port Authority Police Department switched everyone in the Department to 12 hour tours, 7 days a week. Vacations and personal leave time were cancelled. My union did not file any grievances regarding these changes. Everyone recognized that this was a crisis and that emergency measures needed to be resorted to. Our schedule did not return to normal for nearly 3 years. The bottom line is that, even in states with long and strong histories of collective negotiation rights for public safety personnel, management retains discretion to respond to emergencies and potential security risks without negotiation with employees.

As the health risks associated with exposure to the World Trade Center site following 9-11 become more manifest, I am protected by my union's efforts to ensure that workers in the rescue and recovery effort are properly monitored and treated for exposure related diseases that do occur. Employers cannot be permitted to act unchecked because they do not place workers' interests first. For example, the City of New York repeatedly has denied that any of its police officers, firefighters, EMS personnel or other city workers were sickened by exposure to the World Trade Center site. My own agency has resisted classifying legitimate exposure diseases as injuries in the line of duty. I was exposed that day and continued to be exposed for more than a thousand hours in the months afterward as part of the Ground Zero recovery effort.

It is time for the Congress to step up to the plate and act in a comprehensive fashion to mandate collective bargaining in states which do not have it. This legislation would allow law enforcement officers to negotiate on working conditions and to

seek better salaries, benefits, and training, to protect their families and the public. Most importantly, it will allow public safety officers to negotiate the necessary protections that will permit them to walk unselfishly into the line of fire to save the lives of our fellow citizens.

Thank you for this opportunity to speak to you on behalf of America's rank and file law enforcement officers. I ask that my printed testimony be made part of the record, and I would be happy to answer any questions you may have.

Chairman ANDREWS. Thank you. Thank you very much. And I think we speak for the entire subcommittee when we say we have profound respect for the men and women of your department and the profound loss that you suffered on that day. Being from New Jersey, I know some of the families myself that were affected, and it is a loss that we will feel forever. We appreciate your testimony very much.

Mr. NUNZIATO. Thank you, sir.

Chairman ANDREWS. Mr. Reichenberg, we are happy to have you with the committee, and you are recognized.

**STATEMENT OF NEIL REICHENBERG, EXECUTIVE DIRECTOR,  
INTERNATIONAL PUBLIC MANAGEMENT ASSOCIATION FOR  
HUMAN RESOURCES**

Mr. REICHENBERG. Thank you, Mr. Chairman, Congressman Kline and members of the subcommittee.

I am here today on behalf of the International Public Management Association for Human Resources and the International Municipal Lawyers Association to express our concerns with H.R. 980. Issues such as collective bargaining are of great importance to our members because they are at the forefront of implementing such laws as H.R. 980.

Our associations recognize the important role that public safety employees have in providing vital services to citizens on a routine basis as well as their role as first responders in the event of a terrorist attack or natural disaster. We are not opposed to collective bargaining at the state and local government, but firmly believe that state and local governments are in the best position to determine the nature and extent of collective bargaining rights.

We do not believe that a federal one-size-fits-all solution will improve the working conditions or the services provided by firefighters, police and emergency medical personnel, all of which are conducted in accordance with unique local conditions, governmental structures and revenue assistance.

We also believe that the proposed legislation raises serious constitutional issues.

I would like to highlight three points that are made in our written statement.

First, I would like to point out that federalizing collective bargaining is no guarantee of labor-management cooperation. The introduction to H.R. 980 states that collective bargaining is necessary to foster trust, mutual respect, open communications, bilateral, consensual problem solving, and shared accountability. While noble goals, it is unlikely that federalizing collective bargaining will necessarily achieve them.

For many years, IPMAHR worked with employer associations and public-sector unions as part of the Public-Sector Labor-Man-

agement Committee. The committee was established to promote public-sector labor-management cooperation. As a member of the group's steering committee, IPMAHR encouraged labor-management cooperation in the public sector, and while there are many examples of successes, compared to the large number of jurisdictions, it was anything but a common practice.

Contentious labor-management relations are a fact of life in many public-sector organizations. While there is shared responsibility for this, we question the assumption underlying this legislation that federalizing these basic state and local governmental functions is the only way to achieve labor-management cooperation and harmonious relations.

Second, we believe the law is unnecessary because states and localities already have bargaining rights in most instances. The underlying assumption of H.R. 980 is that a federally mandated collective bargaining bill is necessary to protect the rights of police, fire and emergency medical services personnel, but the facts show that state and local governments are in the best position to determine collective bargaining rights. Where collective bargaining is not formal, public safety personnel often negotiate through associations.

In addition, public safety employees, unlike their private-sector counterparts, are protected by due process rights contained in the Constitution and are covered under existing civil service laws.

Third, federal preemption of state and local laws will be confusing and will take away state and local governments' ability to allocate resources. H.R. 980 as written would give substantial authority to the FLRA over public-sector collective bargaining. The FLRA would be tasked with deciding whether or not state laws meet federal requirements and to create regulations to govern the process if the FLRA determines the state law is inadequate.

H.R. 980 is ambiguous because it is not entirely clear what criteria the FLRA would use to determine whether or not a state's laws are substantially adequate. We are concerned that in making the determination as to the adequacy of state laws, the legislation would require the FLRA to "consider and give weight to the maximum extent practicable" to the opinion of the unions. This does not seem to reflect the neutral oversight which this legislation presumes to reflect.

We also question whether the FLRA has the knowledge and capacity to manage collective bargaining for multiple state and local governments. The FLRA is a beleaguered agency as evidenced by the 2007 Best Places to Work rankings of federal agencies that was produced by the Partnership of Public Service and the American University Institute for the Study of Public Policy Implementation and ranked the FLRA a distant last among the small federal agencies based on employee engagement and satisfaction. The FLRA also was last in the 2005 rankings.

Mandating all collective bargaining here in Washington may not be the best answer. What firefighters, police and emergency medical services personnel need in Louisiana is likely to differ greatly from New York as will the state's available resources to pay for and fund their public safety departments. Federalizing collective

bargaining by establishing uniform national standards could have the impact of being less efficient and effective than state laws.

If the legislation is enacted into law, how will the Congress respond when the unions representing teachers and other public-sector organizations say, "Me too," and request similar legislation?

I will stop there and be pleased to respond to any questions. Thank you.

[The statement of Mr. Reichenberg follows:]

**Prepared Statement of Neil E. Reichenberg, Esq., CAE, Executive Director,  
International Public Management Association for Human Resources  
(IPMA-HR)**

Mr. Chairman and members of the Committee, I am here today on behalf of the International Public Management Association for Human Resources (IPMA-HR) and the International Municipal Lawyers Association (IMLA) to express our concern with H.R. 980. Together IPMA-HR and IMLA represent millions of government employees. IPMA-HR is a professional association comprised of human resources practitioners in federal, state and local government. IMLA represents lawyers working in local government and local government organizations. Issues such as collective bargaining are of great importance to our members because they are at the forefront of implementing such laws as H.R. 980.

IPMA-HR is familiar with the Public Sector Employer-Employee Cooperation Act and we participated with several local government groups in presenting testimony in 1999 discussing an earlier draft. IPMA-HR and IMLA have a long history of working with public sector unions on issues of mutual concern and in promoting labor-management cooperation.

IPMA-HR and IMLA recognize the important role that public safety employees have in providing vital services to citizens on a routine basis as well as their role as first responders in the event of a terrorist attack or natural disaster. We are not opposed to collective bargaining at the state and local government level but firmly believe that state and local governments are in the best position to determine the nature and extent of collective bargaining rights. We do not believe a federal "one size fits all" solution will improve the working conditions or the services provided by firefighters, police and emergency medical personnel, all of which are conducted in accordance with unique local conditions, governmental structures and revenue systems. We also believe that the proposed legislation raises serious constitutional issues.

*Federalizing Collective Bargaining Is No Guarantee of "Cooperation"*

The introduction to H.R. 980 includes a list of findings and a declaration of purpose. The first finding states that, "Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. In many public safety agencies it is the union that provides the institutional stability as elected leaders and appointees come and go."

While fostering labor management relationships is a noble goal, it is unlikely that federalizing collective bargaining will achieve it. Oftentimes even where collective bargaining rights are well established, the relationship is not characterized by trust and open communication and it is unclear how giving the Federal Labor Relations Authority (FLRA) authority over states and local government collective bargaining is designed to achieve this goal.

For many years IPMA-HR worked with employer associations and public sector unions as part of the Public Sector Labor-Management Committee. The Committee was established to promote public sector labor-management cooperation. As a member of the group's steering committee, IPMA-HR encouraged labor-management cooperation in the public sector and while there are many examples of successes, compared to the large number of jurisdictions—87,000 units of local government and 50 states—it was anything but a common practice.

And, anecdotal research reveals that successful partnerships are often based on personalities and not on the presence of collective bargaining. Contentious labor-management relations are a fact of life in many public sector organizations. While there is shared responsibility for this, we question the assumption underlying this legislation that federalizing these basic local government functions is the only way to achieve labor-management cooperation and harmonious relations.

A recent situation in St. Paul, Minnesota is instructive. Collective bargaining has been in place for many years but the situation between the fire chief and the firefighters union is described as "acrimonious." In March 2007, the results of an audit were released that detailed the situation in the St. Paul Department of Fire and Safety Services (SPDFSS) which includes both fire and EMS personnel. The audit is available online at: <http://www.stpaul.gov/fireaudit/>.

The audit states:

Organizationally, the SPDFSS is in a state of internal crisis. The problems have not yet affected delivery of service to the public but could easily do so if not addressed. Most of the internal tension is between the fire chief and the firefighters union (Local 21). A 2005 survey conducted by the union determined that a majority of its members were critical of the Department's direction. The absence of trust between firefighters and the fire administration is a key factor affecting poor relations between labor and management. [See page 7 of the audit].

The 305-page document describes just how bad the situation is: "The fire chief antagonizes the union by issuing orders that are an attempt perceived as to show his power. In response, the union encourages members to file grievances, contacts politicians about minor issues, and initiates legal actions that cost the city valuable staff time and money." There is nothing in the proposed legislation or in the mandating of federally supervised collective bargaining which would alleviate this situation.

*The law is Unnecessary Because States and Localities Already Have Bargaining Rights in Most Instances*

State and local governments are in the best position to determine collective bargaining rights. The underlying assumption of H.R. 980 is that a federally-mandated collective bargaining law is necessary to ensure the rights of police officers, firefighters and emergency medical services personnel. But, the facts show that state and local governments are capable of establishing collective bargaining rights and in fact have done so in the majority of states. Where collective bargaining is not formal, public safety personnel often negotiate through associations. In addition, public safety employees, unlike their private sector counterparts, are protected by due process rights in the Constitution and are covered under existing civil service laws.

According to the Bureau of Labor Statistics report of January 25, 2007, union membership in the public sector was substantially higher than in the private sector, with 41.9 percent of local government workers belonging to a union. "This group includes several heavily unionized occupations, such as teachers, police officers, and firefighters."

According to the Government Accountability Office report on Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights, September 2002, 26 states and the District of Columbia have laws that provide collective bargaining rights to essentially all public employees. Another 12 states have laws that provide bargaining rights to specific groups of workers. Texas prohibits collective bargaining for most public employees but allows police and fire bargaining in jurisdictions with approval from a majority of voters.

Even in the 11 states that do not have collective bargaining laws, most if not all have associations. Many localities within those states may also have their own associations or collective bargaining arrangements. A quick Internet search revealed firefighter associations in all 12 states and many localities within those states. In Little Rock, Arkansas, where there is no state collective bargaining law, the city has bargaining agreements with more than three-fourths of their employees; this has been the case for the past 20 years.

The facts show that states and localities are capable of creating collective bargaining rights consistent with their own laws and government structures, including state constitutions, and that public safety officers are capable of forming unions and associations in the absence of federal legislation.

*Federal Preemption of State and Local Laws Will be Confusing and Will Take Away State and Local Government's Ability to Best Allocate Resources*

H.R. 980, as written, would give substantial authority to the FLRA over public sector collective bargaining. The FLRA would be tasked with deciding whether or not state laws meet federal requirements and to create regulations to govern the process if the FLRA determines that the state law is inadequate.

H.R. 980 is ambiguous because it is not entirely clear what criteria the FLRA would use to determine whether or not a state's laws are "substantially" adequate. We are concerned that in making the determination as to the adequacy of state laws, the legislation would require the FLRA to "consider and give weight, to the

maximum extent practicable,” to the opinion of the unions. This does not seem to reflect the neutral oversight which this legislation presumes to reflect.

We also question whether the FLRA has the knowledge and capacity to manage collective bargaining for multiple state and local governments. The FLRA is a beleaguered agency as evidenced by the 2007 Best Places to Work rankings of federal agencies that was produced by the Partnership for Public Service and the American University Institute for the Study of Public Policy Implementation and ranked the FLRA last among the small federal agencies based on employee engagement and satisfaction.

Although supporters of H.R. 980 have said that the bill would have a minimal impact on state and local government collective bargaining, it is not at all clear from the way the bill is written. For instance, the bill requires states to provide for bargaining over hours, wages and terms and conditions of employment. Hours and wages are regulated now by a variety of federal, state, and local laws and require coordination, at the very least, with revenue authority. “Terms and conditions of employment” is even less clear. Does it include the type of safety gear, minimum staffing standards, or something else?

In Oregon, the state legislature just finished a contentious debate over whether or not minimum staffing levels and overtime could be included in collective bargaining. The result is that beginning in 2008, those issues will be included in collective bargaining if they have an impact on on-the-job safety (or a significant impact in the case of minimum staffing levels). This was one of the most hotly debated issues in the legislature this year and individuals, associations, and firefighters weighed in. The fact that the Oregon legislature reached a compromise is significant for two reasons.

First, it argues against the need for H.R. 980 at all. Firefighters in Oregon did not need any federal legislation to resolve an issue and the state was able to reach a successful compromise. Second, to the extent the compromise took into consideration the allocation of scarce local resources and allowed Oregon to consider the successes and failures in other states it would seem best to leave such important decision making to the states and localities that will have to live with and fund the consequences.

Mandating all collective bargaining here in Washington, D.C. may not be the best answer. What firefighters, police and emergency medical services personnel need in Louisiana is likely to differ greatly from New York, as will the states’ available resources to pay for and fund their public safety departments. And, federalizing collective bargaining by establishing uniform, national standards could have the impact of being less efficient and effective than state and local laws.

For instance, Montgomery County, Maryland has longstanding collective bargaining relationships and has fostered a spirit of partnership with labor unions representing its public safety employees according to Joe Adler, director of the Office of Human Resources, Montgomery County. In the county, unfair labor practice issues and negotiability issues are resolved by the county’s permanent umpire/labor relations administrator sometimes within days and generally within a few weeks. Mr. Adler notes that in the federal sector it has taken the FLRA sometimes years to issue decisions in certain unfair labor practice cases. Should H.R. 980 change the impasse resolution mechanism in Maryland and in other jurisdictions like it, it may not be an improvement.

Although bill supporters have argued that the cost will be minimal, that is not certain. State and local governments, at a minimum, will have to hire additional personnel to ensure that their laws meet federal standards, and the costs could be enormous if state and local governments can no longer make the decisions of how to best allocate scarce resources. If the result of collective bargaining requires hiring more staff or purchasing more equipment, this will require a great deal of money and to that extent is an unfunded mandate. Furthermore, H.R. 980 is unclear on the issue of volunteer fire departments. Will they be covered? If so, this will be an additional cost and unfunded mandate on state and local governments.

If this legislation is enacted into law, how will the Congress respond when the unions representing teachers and other public sector occupations request similar legislation? Does the Congress intend to have the federal government mandate collective bargaining and establish federal standards that would apply throughout state and local government?

#### *H.R. 980 Raises Serious Constitutional Issues*

Finally, H.R. 980 raises serious Constitutional concerns. These issues were raised during the 2000 hearing on the same bill and we believe they deserve your consideration today. The Supreme Court has issued several opinions during the last decade

that call into question the power of Congress to subject state and local governments to federal regulation.

The Supreme Court has in recent years limited the authority of Congress to pass laws abrogating states' immunity from lawsuits. In the case *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), the Court ruled that the Commerce Clause does not give Congress the authority to abrogate a state's Eleventh Amendment immunity to suit. Subsequent Supreme Court decisions have found states immune from suit under employment-related laws such as the Fair Labor Standards Act (FLSA), in *Alden v. Maine*, 527 U.S. 706 (1999), and the Americans with Disabilities Act (ADA) in *Board of Trustees of the University of Alabama et al. v. Garrett et al.*, 531 U.S. 356, 369 (2001).

Other Supreme Court opinions call into question the authority of Congress to pass laws affecting state and local activity. In *U.S. v. Lopez*, 514 U.S. 549 (1995), the Court found Congress exceeded its authority under the Commerce Clause in passing the Gun-Free School Zones Act of 1990, and in the case *Flores v. City of Boerne*, 521 U.S. 507 (1997), the Court found that Congress exceeded its power under Section 5 of the Fourteenth Amendment in passing the Religious Freedom Restoration Act (RFRA). Congress's authority to enact H.R. 980 is highly questionable.

For the reasons contained in this testimony, we would urge the Subcommittee not to mandate collective bargaining for public safety employees. IPMA-HR and IMLA appreciate the opportunity to present our concerns with H.R. 980.

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Chairman ANDREWS. Thank you very much for your testimony.

I did also want to mention that another group of people who have a very, very difficult and crucial public safety job—we have some representatives—are corrections officers who are represented by AFSCME who are here today, and we thank them for their very difficult service. And, frankly, I believe they deserve the protections of this proposal as well and would receive it.

Mayor Seybold, I will tell you there was some heated debate about whether to invite you today because, although we were impressed by the sports deal, we did note for the record that you defeated when you ran for office a Democratic incumbent by a 62-to-38 margin.

So we are glad that you are here, but putting partisanship aside, I would say to you that I think that your presence here today as a devout Republican shows that this is not an ideological issue but a practical one.

We welcome you to the committee.

**STATEMENT OF HON. WAYNE W. SEYBOLD, MAYOR, MARION,  
INDIANA**

Mr. SEYBOLD. Thank you. Thank you very much, Mr. Chairman Andrews and Ranking Member Mr. Kline and members of the subcommittee. I am happy to be here, too, on a bipartisan effort.

With me today, I have our fire chief, Steve Gorrell; our assistant union chief, Jamie Littick; and Tom Hanify, who heads the firefighters union for the state of Indiana.

Marion, Indiana, is a community of approximately 32,000 and has faced numerous economic challenges. With the closing of one of our largest manufacturing plants, everyone in our community was touched by it in one way or another. At a critical moment, the private sector, the nonprofit sector and our labor unions stepped up to the plate to turn the community around.

The city of Marion's collective bargaining units were part of that team and were willing to make sacrifices for the betterment of the community. My first negotiations with the units started by my indication that pay raises would not be happening at that time. One

would think that the negotiations would have ended at that point. However, our units expressed an understanding and agreed to be our partners.

Since our first negotiation, the city and our collective bargaining units have maintained an incredibly positive relationship. In order for employer-management relationships to be productive, there must be a trust and mutual respect. Both must be willing to keep lines of communication open. Most specifically, public safety employer-employee cooperation is essential. They are the front lines of defense for our community, and they deserve the right to discuss workplace issues with their employer.

An example of a success story is best depicted by our relationship with our Marion Fire Department. After being hit with years of political backlash, this group was anything but trusting in the beginning. They came to the table asking for a lot more than we could provide, but instead of getting frustrated, they asked if they could come back with a potential win-win solution for everyone.

Understanding that our way is not the only way and that we do make mistakes, we encouraged them to do their homework. They came back with their presentation, which was very creative and impressive to say the least. Instead of raises, they opted to have the city pay more of their share toward their pension. An agreement was reached, approved by the union, and ratified by the council.

While many not always agree, one thing that we know is that there is a sense of trust and respect that has evolved. This type of relationship gives the employees a sense of ownership and importance. By promoting such cooperation, our community enjoys a more effective and efficient delivery of emergency systems. Because of our relationship with our collective bargaining units, we have built the city's cash reserves from nearly nothing to over \$7 million, and this year, we are happy to announce that we are going to reduce our tax rate by almost 2½ cents.

Everyone benefits when there is a good relationship between employer and labor-management. We are proud to stand alongside and support our local firefighters and our state firefighters, ensuring that they have the opportunity to bargain for workplace issues and resolve issues regarding the duty of bargaining in good faith.

The Marion Fire Department has assisted in numerous fund-raising activities with Fill the Boot programs. These programs have provided monetary assistance to numerous nonprofit organizations. And because of these types of things that our fire departments do, they have helped us reduce our taxes and helped us not have to spend tax dollars in order to do things like build a new humane society.

The Marion Fire Department is constantly looking for new ways and innovative ways to relieve the burden of taxpayers. By applying for grants for equipment, they have helped us reduce our budget in that way.

Marion firefighters are a group of very dedicated professionals who are committed to the citizens of Marion and Grant County. Any assistance that you could provide them and public safety officers around the United States would be greatly appreciated.

Thank you for your time and support in this important matter, and I would be happy to address any questions later. Thank you.  
 [The statement of Mayor Seybold follows:]

**Prepared Statement of Hon. Wayne W. Seybold, Mayor, Marion, Indiana**

Good afternoon, my name is Wayne W. Seybold and I am the Mayor of Marion, Indiana. I would like to thank the Chairman and members of the Subcommittee for inviting me to testify today.

Marion, Indiana, a community of approximately 32,000 citizens, has faced numerous economic challenges within my first term of office. With the closing of one of our largest manufacturing plants, everyone within our community was touched by it in one way or another. At that critical moment, the private/public sector, not-for-profit and labor unions stepped up to the plate to turn our community around.

The City of Marion's collective bargaining units were a part of that team that were willing to make sacrifices for the betterment of the community. My first negotiations with the units started by my indication that pay raises were not an option at that time. One would think that the negotiations would have ended at that point. However, our units expressed their understanding and agreed to partner with us.

Since our first negotiation, the City and our Collective Bargaining Units have maintained an incredibly positive relationship. In order for employer management relationships to be productive, there must be trust and mutual respect. Both must be willing to keep lines of communication open. More specifically, public safety, employer/employee cooperation is essential. They are the front line defense for our communities, and deserve the right to discuss workplace issues with their employer.

An example of a success story is best depicted by our relationship with the Marion Fire Department. After being hit with years of political backlash, this group was anything but trusting in the beginning. They came to the table asking for a lot more than we could agree to, but instead of getting frustrated they asked if they could come back with a potential win-win solution for everyone. Understanding that our way is not the only way, nor always the best way, we encouraged them to do their homework. They came back with their presentation, which was very creative and impressive to say the least. Instead of raises, they opted to have the City pay more of their share toward their pension. An agreement was reached, approved by the Union, and submitted to the council.

While we may not always agree, one thing we now know is that there is a sense of trust and respect that has evolved. This type of relationship gives the employees a sense of ownership and importance. By promoting such cooperation, our community enjoys a more effective and efficient delivery of emergency services. Because of our relationship with our collective bargaining units, we have built the city's cash reserves up from nearly nothing to almost seven million dollars. Everyone benefits when there is a good relationship between employer and labor management team. We are proud to stand along side and support our local and state firefighters in ensuring that they have the opportunity to bargain for workplace issues and resolve issues regarding the duty of bargaining in good faith.

The Marion Fire Department has assisted in numerous fundraising activities with their "Fill the Boot" program. This program has provided monetary assistance to numerous not-for-profit organizations. This assistance allows these entities to continue to provide services to those who need it in the community. The Grant County Cancer Society benefits from this program in a great way. The money raised allows for important research and development strategies. The program has also assisted the local humane society raise money to properly care for the vast number of abandoned animals. The local humane society is in dire need of a new facility, and the Marion Firefighters have agreed to donate their time to help build it. The willingness to give up their personal time to help build the new humane society will be of great benefit to taxpayer's money.

The Marion Fire Department is constantly searching for new and innovative ways to help relieve the burden of the taxpayers. An example of this is the way the firefighters showed initiative to apply for grants to purchase equipment. In this effort, over the last three years, the department was awarded over \$200,000.00 in grant money.

Marion Firefighters are a group of very dedicated professionals who are committed to the citizens of Marion and Grant County. Any assistance that you could provide would be greatly appreciated.

Thank you for your time and attention to this very important matter. I would be more than happy to address any questions the subcommittee may have for me.

Chairman ANDREWS. Mayor, thank you very much for your service and for your testimony.

I always say that local mayors and council people, I think, have one of the hardest jobs in government, that we get stopped in the supermarket and somebody asks us about a foreign policy question or the estate tax or something. I know you get stopped and asked about leaf pickup and snow removal, and you have to deal with their problems right away.

So I have profound respect for mayors of all political backgrounds. We are glad that you are here today.

Mr. SEYBOLD. Well, thank you very much.

Chairman ANDREWS. Mr. Clark, welcome to the subcommittee. You are recognized for 5 minutes.

**STATEMENT OF R. THEODORE CLARK, JR., PARTNER,  
SEYFARTH SHAW, LLP**

Mr. CLARK. Thank you.

Mr. Chairman and members of the committee, today I am testifying on behalf of the National Public Employer Labor Relations Association, an association of over 3,000 labor-management professionals employed by federal, state and local governments who negotiate public safety contracts in 45 states.

At the outset, let me emphatically state that I support collective bargaining for public safety employees. I have negotiated hundreds of contracts covering police and fire bargaining units, and I urged the Illinois legislature to enact a public-sector collective bargaining law, something that finally occurred in 1983.

Thus, my opposition to H.R. 980 is not because I oppose collective bargaining for public safety employees, but because I believe that H.R. 980 will preempt numerous state laws and will result in a wholly unwarranted intrusion by the federal government into matters that should best be left to the states.

Under H.R. 980, if the FLRA determines that a state law does not substantially provide for the rights and responsibilities set forth in the act, then that state is subjected to a mandatory labor relations scheme administered by the FLRA. As a result of the act's very broad definition of what must be negotiated, the exclusions from the scope of bargaining set forth in most state laws will likely result in those laws not meeting the "substantially provides" test.

Some examples: New York prohibits negotiations over pensions. The Michigan constitution specifically excludes promotions from the scope of bargaining for state police. The Wisconsin statute covering state employees prohibits bargaining over the policies, practices and procedures of the civil service merit system relating to such things as promotions and the state's job evaluation system.

If a state statute flunks the "substantially provides" test, then the affected state will either have to amend its law or, in the case of Michigan, amend its constitution to delete such exclusions or involuntarily be subjected to the FLRA's labor relations provisions, and that this will create substantial friction between the federal government and several states should be clear to all.

To make matters worse, the act requires that the FLRA, in making "substantially provides" determinations, must consider and give weight to the maximum extent practicable to the opinion of affected

employee organizations. Since it is state laws that might well be invalidated, one can only wonder why the views of the states are being subordinated to the views of organized labor.

And to add insult to injury, the FLRA's final order with respect to questions of fact and law is conclusive, unless the court determines that the decision was arbitrary and capricious. That the deck is being stacked against the states seems obvious.

Lest anyone think that the states have not done anything in this area, let's look at a few facts. Thirty-eight states have labor laws covering both firefighters and/or police officers. Virtually all of those laws go far beyond the law covering firefighters and police officers employed by the federal government.

In most states without laws, collective bargaining is legal, and many public employers, presumably including Marion, in those states have entered into contracts with police and fire unions. Over 68 percent of all firefighters and over 58 percent of all police officers are union members. I believe that these facts strongly suggest that there is no compelling need for H.R. 980.

Since the asserted need for H.R. 980 is predicated in major part on the essential role that public safety officers play in the efforts of the United States to detect, prevent and respond to terrorist attacks, one must wonder why Congress and every president since Jimmy Carter has decided to exempt from collective bargaining untold thousands of federal employees who would be considered public safety officers under H.R. 980.

For example, employees at the FBI, CIA, NSA, DEA and countless other federal agencies have been excluded from coverage under the labor relations provisions of the Civil Service Reform Act, and those that are covered, Congress has said they have no right to negotiate over wages, pensions and health benefits. Rather, Congress has decided that those are among the topics that should be set by Congress and not be subject to collective bargaining since the states should have the same discretion to make similar policy determinations.

Thank you very much.

[The statement of Mr. Clark follows:]

**Prepared Statement of R. Theodore Clark, Jr., Partner, Seyfarth Shaw, LLP, on Behalf of the National Public Employer Labor Relations Association (NPELRA)**

Today, I am speaking on behalf of the National Public Employer Labor Relations Association (NPELRA). The National Public Employer Labor Relations Association (NPELRA), established in 1970, is the professional association for practitioners of labor and employee relations employed by federal, state and local governments, school and special districts.

H.R. 980, the so-called Public Safety Employer-Employee Cooperation Act of 2007, is predicated on the apparent assumption that federally mandated solutions in the labor relations area are better than those arrived at by state and local governments. The needs of state and local government in the area of employer-employee relations, however, can best be determined on a state and local basis rather than by resort to federal legislation.

Lest there be any mistake about my position, let me emphatically state that I wholeheartedly support collective bargaining in the public sector where a majority of the employees in an appropriate bargaining unit have opted to be represented for the purposes of collective bargaining. I have participated in the negotiation of literally hundreds of public sector collective bargaining agreements covering police officers and firefighters over the years. At last count, I have represented public employers with respect to collective bargaining and employment law issues in over 30

states, from the State of Minnesota to the State of Louisiana and from the State of Washington to the State of Florida. Moreover, I worked for many years in support of the enactment of public sector collective bargaining legislation in Illinois,<sup>1</sup> something that finally occurred in 1983, when the Illinois General Assembly enacted the two basic public sector labor laws that cover public employees in Illinois. As a result, my opposition to federal collective bargaining legislation such as H.R. 980 is not because I oppose public sector collective bargaining, but rather because of my firm belief that the enactment of a federal collective bargaining law would severely limit the demonstrated innovative and creative abilities of the states and local jurisdictions to deal in a responsible manner with the many complex issues that public sector collective bargaining poses.

*H.R. 980 would displace State and local options in determining how employment relations should be structured for police officers and firefighters employed by States and units of local government*

The apparent premise upon which H.R. 980 has been drafted is that there should be one monolithic model for how employment relations for police officers and firefighters should be handled at the state and local level. Thus, if the Federal Labor Relations Agency ("FLRA") determines that a state law does not "substantially provide for the rights and responsibilities described in Section 4(b) of the Act," then that state is subjected to the labor relations scheme established pursuant to rules issued and administered by the FLRA.<sup>2</sup>

At the outset, it is important to note that the standard by which state legislation is to be judged by the FLRA is quite similar to a provision in the National Labor Relations Act ("NLRA") that gives the NLRB the authority to cede jurisdiction to state agencies as long as the State's legislation is not "inconsistent" with the provisions of the NLRA.<sup>3</sup> Although several states, including New York, Wisconsin and Michigan, have private sector legislation that closely parallel the NLRA, the NLRB has repeatedly refused to cede jurisdiction to the state boards in those states. Given the unwillingness of the NLRB to find state statutes to be consistent with the NLRA, it is clearly open to substantial doubt as to whether the FLRA would be willing to find that a state public sector collective bargaining statute "substantially provides" for the rights and responsibilities set forth in H.R. 980. Nor do you have to just take my opinion on this very important issue. When Congress held hearings in 1972 on proposed federal public sector collective bargaining legislation that would be applicable at the state and local level, Arvid Anderson, a former member of the Wisconsin Employment Relations Commission and the then Chairman of the Office of Collective Bargaining in New York City, testified as follows:

"[T]he experience of the administration of the Labor Management Relations Act by the National Labor Relations Board throughout its entire history demonstrates conclusively that a Federal administrative agency will, if left to its own discretion, refuse to cede to any competent state authority administration over any phase of its statute."<sup>4</sup>

Given Arvid Anderson's observations, it is probable that most, if not all, state enactments covering police officers and firefighters would not meet the "substantially provides" test. Several examples illustrate the problem.

Perhaps the best examples of the impact of H.R. 980 on existing state laws is the likely interpretation of the term "hours, wages, and terms and conditions of employment," i.e., the scope of mandatory bargaining specified in Section 4(b)(3). Take the issue of pensions. Normally, the pensions are considered a form of compensation and thus fall within the mandatory scope of bargaining.<sup>5</sup> Because of the enormous costs that have ensued as a result of negotiations over public sector pensions, a number of states have specifically excluded pensions from the scope of bargaining. For example, the New York Taylor Law specifically provides that the scope of negotiations "shall not include any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries" and that "[n]o such retirement benefits shall be negotiated pursuant to this Article, and any benefits so negotiated shall be void."<sup>6</sup> It was the near bankruptcy of New York City and several other New York cities in the late 1970's, brought on in part by overly generous negotiated increases in pension benefits, that prompted the New York legislature to adopt this ban on negotiations over pensions. Under H.R. 980, however, the federal law would presumably preempt inconsistent state law.

Like New York, virtually every state collective bargaining statute provides for some limitation on the scope of bargaining. The following are but a few of the numerous examples that could be provided:

- The Illinois statute covering police and firefighters specifically excludes from the mandatory scope of negotiations residency requirements in the City of Chicago,

"the type of equipment, other than uniforms [and turnout gear for firefighters] issued or used," "the total number of employees employed by the department," and "the criterion pursuant to which force, including deadly force, can be used." In addition, for police the subject of manning is removed from the mandatory scope of negotiations.<sup>7</sup>

- The Maine statute covering state employees provides that negotiations over the state's compensation system for such things as the "number of and spread between pay steps within pay grades" and the "number of and spread between pay grades with the system" "may not be compelled by either the public employer or the bargaining agents sooner than 10 years after the parties' last agreement to revise the compensation system pursuant to a demand to bargain."<sup>8</sup>

- The Michigan Constitution specifically excludes the subject of promotions from the scope of bargaining for state police troopers and sergeants and provides instead that promotions "will be determined by competitive examination and performance on the basis of merit, efficiency and fitness."<sup>9</sup>

- The Nevada statute excludes numerous subjects from the mandatory scope of bargaining and provides instead that they "are reserved to the local government employer without negotiation," including the right to "assign or transfer an employee" for non-disciplinary reasons, "[t]he right to reduce in force or lay off any employees because of lack of work or lack of money," "[a]ppropriate staffing levels," and the "means and methods of offering" services to the public."<sup>10</sup>

- The Wisconsin statute covering state employees prohibits bargaining over many topics, including "the policies, practices, and procedures of the civil service merit system relating to" such things as "promotions" and the state's "job evaluation system," as well as "compliance with the health benefit plan requirements" that are specified elsewhere in state law. In addition, this Wisconsin statute excludes from the mandatory scope of negotiations most of the statutorily specified management rights, as well as "matters related to employee occupancy of houses or other lodging provided by the state." Finally, the director of the state's office of collective bargaining is directed to try to negotiate contracts that "do not contain any provision for the payment to any employee of a cumulative or noncumulative amount of compensation in recognition of or based on the period of time an employee has been employed by the state," i.e., longevity pay.

With H.R. 980's very broad definition of what must be negotiated, efforts by these states—all of which should be viewed as "labor friendly" states—and many others to carefully exclude certain subjects from the mandatory scope of bargaining would, in all likelihood, be preempted. The potential consequences of such a limitation on the right of states and local units of government to deal with their own unique circumstances would be devastating. Moreover, it heightens the probability that there will be frequent clashes between federal government on the one hand and state and local government on the other over policy judgments that should, in reality, be made at the state and local level. Such likely clashes would undermine federal-state relationships in an entirely unnecessary way. Since the terms and conditions of employment for police officers and firefighters are so uniquely local in nature, the scope of negotiations over them should not be mandated by federal law.

Another very real problem with respect to H.R. 980 is the conflict between its defined scope of bargaining and the existence of civil service systems in most states and in a substantial number of units of local government as well. One of the primary principles of civil service is the merit principle for the employment and advancement of public employees. If H.R. 980 were enacted, however, there is no specific exclusion from the otherwise broad scope of bargaining to protect the merit principle. As a result, union proposals to make promotions based entirely or substantially on seniority would probably fall within the mandatory subject of bargaining, even though such proposals are outside the scope of mandatory bargaining under many state and local collective bargaining laws, some of which were discussed above, as well as under the Civil Service Reform Act of 1978. Interestingly, when then Secretary of Labor Arthur Goldberg recommended to President Kennedy that federal employees be given the right to organize and bargain collectively, he made the following cautionary comment:

The principle of entrance into the career service on the basis of open competition, selection on merit and fitness, and advancement on the same basis, together with a full range of principles and practices that make up the Civil Service System govern the essential character of each individual's employment. Collective dealing cannot vary these principles. It must operate within the framework.<sup>11</sup>

Simply stated, H.R. 980 would, in all likelihood, result in the invalidation of existing state laws that protect the merit principle from encroachment through the collective bargaining process.

One could take virtually any of the 38 state statutory provisions providing collective bargaining rights for police officers and/or firefighters and come to the conclusion that there is something in each law that likewise does not meet the "substantially provides" test.<sup>12</sup> This fact illustrates the fundamental problem with H.R. 980, i.e., it is based on a federally prescribed, "one-size-fits-all" formula for establishing what rights and responsibilities firefighters and police officers should have at the state and local level. It totally ignores the political and practical policy judgments made by numerous state legislatures concerning what is best for police officers and firefighters in their states.

Under our system of federalism, the fact that there are many different solutions and approaches to these issues is not only expected but it is also encouraged. While the IAFF, FOP, and other unions that represent firefighters and police officers would undoubtedly like one uniform national law because it would make their job easier, that is hardly a valid reason for federal legislation. The diversity of state and local legislation with respect to police officers and firefighters is not something to be overridden by federal law but rather is something that should be encouraged and promoted. As the Advisory Commission on Intergovernmental Relations observed many years ago, "\*\*\* experimentation and flexibility are needed, not the standardized, Federal, preemptive approach."<sup>13</sup>

The chilling effect that Federal legislation along the lines of H.R. 980 would have on such experimentation seems clear. When Congress was last considering such legislation in the early 1970s, Dr. Jacob Seidenberg, the then Chairman of the Federal Services Impasse Panel, observed that the enactment of Federal legislation would curtail necessary experimentation since "there is an aspect of permanency and inflexibility in Federal legislation."<sup>14</sup> If H.R. 980 were enacted, it would, in the words of Justice Oliver Wendell Holmes, "prevent the making of social experiments \*\*\* in the isolated chambers afforded by the several states \*\*\*"<sup>15</sup>

States and local units of government should have the right to make policy decisions with respect to whether police officers and firefighters should be granted the right to engage in collective bargaining and, if so, under what terms and conditions as opposed to having all such matters mandated by federal law. Relevant in this regard are the following comments in an article on federalism that appeared the ABA Journal several years ago:

Given real choices, citizens who are not satisfied with state government "can vote with their feet as well as at the ballot box," and go pursue their happiness in another state, he points out. People "get to choose among different sovereigns, regulatory regimes, and packages of government services," he says. This freedom disciplines the states.<sup>16</sup>

*Since the vast majority of States have collective bargaining laws covering police officers and/or firefighters and the vast majority of all police officers and firefighters are union members, there is no substantial need for Federal legislation*

By my count, 34 states have enacted public sector collective bargaining laws covering both police officers and firefighters.<sup>17</sup> An additional four states have enacted laws covering firefighters only.<sup>18</sup> And while some states such as Arizona have opted not to enact collective bargaining laws covering police officers and firefighters, local ordinances have been adopted in such cities as Phoenix that grant such employees the right to engage in collective bargaining. Moreover, in many of the states that have not enacted laws collective bargaining is legally permissible and, as a result, there are many examples of jurisdictions that have voluntarily agreed to recognize fire and police unions and have negotiated collective bargaining agreements.<sup>19</sup>

In addition to the large number of states with public sector collective bargaining laws covering police officers and/or firefighters, the vast majority of police officers and firefighters are already union members. While less than 8 percent of all non-agricultural private sector workers belong to unions, nearly 40 percent of all public employees are union members. The statistics are even more compelling with respect to police officers and firefighters.<sup>20</sup> For firefighting occupations, the union density rate is 68.8 percent; for police and sheriff's patrol officers, the union density rate is 58.7 percent.<sup>21</sup> These statistics strongly suggest that there is absolutely no compelling need to enact federal legislation for police officers and firefighters at the state and local level.

Since the vast majority of states have collective bargaining laws and since the vast majority of all police officers and firefighters are union members, there is no need for federal legislation that would require states to either adopt one monolithic model for collective bargaining prescribed by Congress or be subjected to the jurisdiction of the Federal Labor Relations Authority and the collective bargaining rules prescribed by FLSA. With respect to the few remaining states that do not have public sector collective bargaining laws covering police officers and/or firefighters, the

political judgment has presumably been made that such laws are not necessary. Police officers and firefighters, like all other public employees, have their First Amendment rights to petition their public employers. Indeed, unlike employees in the private sector, they have the right to participate in the election of their employers and to influence the decisions of those elected officials. From my travels around the country, it is my unequivocal observation that police officers, firefighters, and their unions have considerable political clout in virtually every state legislature. Even though they may not have been successful in getting a given state legislature to adopt a collective bargaining law, there are numerous instances in which they have had a significant impact on changes in pension legislation and other legislation concerning their terms and conditions of employment.

Since police and fire unions have demonstrated their political prowess at the state and local level, it would be my suggestion that they should redirect their efforts to the state and local level, rather than push for federal legislation with all of the attendant problems. In fact, such activity is presently taking place in at least one of states that does not have a public sector collective bargaining law covering public safety officers-North Carolina. Thus, a "Public Safety Employer-Employee Cooperation Act," with provisions remarkably similar to H.R. 980, has been introduced in the current session of the North Carolina Senate.<sup>22</sup> This is where the debate over whether such legislation is needed should take place, i.e., at the state level and not at the federal level.

*The stated rationale for H.R. 980 is directly at odds with what Congress and every President since Jimmy Carter has determined to be appropriate for large numbers of public safety employees employed by the Federal Government*

The primary rationale for H.R. 980, as set forth in the Act's Findings and Declaration of Purpose, is that "the settlement of issues through the processes of collective bargaining" is in "the National interest" since "State and local public safety officers play an essential role in the efforts of the United States to detect, prevent, and respond to terrorist attacks," as well as "other mass casualty incidents."<sup>23</sup> If that is the case, then one must wonder why Congress and every President since Jimmy Carter have decided to exempt untold numbers of federal employees who would be deemed to public safety officers under H.R. 980. Consider for example, the following:

- The Federal Bureau of Investigation ("FBI"), the Central Intelligence Agency ("CIA"), the National Security Agency ("NSA"), and the United States Secret Service, and the United States Secret Service Uniformed Division are totally exempt from coverage under the collective bargaining provisions of the Civil Service Reform Act of 1978 ("CRA") and, as a result, tens of thousands of employees employed by these agencies have no enforceable right to engage in collective bargaining.<sup>24</sup>

- The CRA also permits the President to issue an order suspending any provision of the CRA with respect to any federal agency or activity if "the President determines that the agency or subdivision has a primary function intelligence, counter-intelligence, investigative, or national security work" and that the provisions of the CRA "cannot be applied to that agency or subdivisions in a manner consistent with national security requirements and considerations." 5 U.S.C. § 7103(b). In Executive Order 12171, President Carter excluded literally hundreds of federal agencies or subdivisions from being covered by the CRA.<sup>25</sup> Significantly, Executive Order 12171 has been amended and extended by every subsequent President, including President Clinton, to exclude additional federal employees from coverage under the Federal Labor-Management program.<sup>26</sup> For example, in Executive Order 12632, "\*\*\* all domestic field offices and intelligence units of the Drug Enforcement Administration" were excluded.<sup>27</sup>

Separate and apart from the two diametrically opposed standards for determining whether collective bargaining is appropriate for public safety employees, it also must be emphasized that the law enforcement officers and firefighters employed by the Federal government who are covered by the Civil Service Reform Act of 1978 have no right to negotiate over wages, pensions, and many other significant terms and conditions of employment. Rather, Congress has decided, and rightfully so, that certain issues ought to be decided by Congress itself and not be subject to collective bargaining. Thus, the CRA provides for negotiations over "conditions of employment," but it specifically excludes any matters like wages and pensions that "are specifically provided for by Federal statute."<sup>28</sup> That being the case, one would think that the state legislatures should be given the same discretion to make similar policy determinations.<sup>29</sup>

It is more than ironic that the federal government's own collective bargaining statute would not even come close to meeting the standards specified in H.R. 980 that state collective bargaining statutes must meet in order to remain in effect and not be preempted by the substantive provisions of H.R. 980.

*H.R. 980 is rather clearly unconstitutional as applied to States and in all likelihood it would be held unconstitutional as applied to units of local government*

Finally, there is a substantial question concerning whether H.R. 980 passes constitutional muster. In my judgment, it does not. H.R. 980 defines the terms “employer” and “public safety employer” to “mean any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers.”<sup>30</sup> From the text of H.R. 980, it is clear that the purported constitutional basis for enacting H.R. 980 is the Commerce Clause. However, the Supreme Court in a series of decisions starting with the Seminole Tribe of Florida v. Florida<sup>31</sup> has unequivocally held that Congress does not have the authority to abrogate the Eleventh Amendment immunity of states under the Commerce Clause. There is absolutely no doubt in my mind that the Supreme Court today would hold that Congress does not have the constitutional authority under the Commerce Clause to enact H.R. 980 vis-a-vis states and thereby abrogate their Eleventh Amendment immunity.<sup>32</sup>

Moreover, even if H.R. 980 were amended to specifically provide that Congress was unequivocally abrogating the Eleventh Amendment immunity of states pursuant to the Enforcement Clause of the Fourteenth Amendment, it is nevertheless quite clear that the Supreme Court would hold that Congress would not be acting pursuant to a valid grant of constitutional authority. In Florida Prepaid Post-Secondary Education Expense Board v. College Savings Bank,<sup>33</sup> the Court held that the authority of Congress under the Fourteenth Amendment is “to enforce, not the power to determine what constitutes a constitutional violation.”<sup>34</sup> Thus, under the test articulated by the Supreme Court, Congress would only have the authority under the Fourteenth Amendment to enact public sector collective bargaining legislation such as H.R. 980 if its objective is the “carefully delimited remediation or prevention of constitutional violations.”<sup>35</sup>

The right of public employees to be represented for the purpose of bargaining collectively with their public employers, however, has never been recognized as a constitutional right. To the contrary, the courts have uniformly held that it is not a violation of the constitutional rights of public employees for public employers to refuse to engage in collective bargaining.<sup>36</sup> Indeed, the Supreme Court in its unanimous 1979 per curium decision in Smith v. Arkansas State Highway Employees, Local 1315<sup>37</sup> rejected a claim that the Arkansas State Highway Commission violated the constitutional rights of highway department employees when it refused “to consider or act upon grievances when filed by the Union rather than by the employee directly.”<sup>38</sup> In rejecting the employees’ constitutional claims, the Court noted that while a “public employee surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so, \* \* \* the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.”<sup>39</sup>

Since there is no constitutionally recognized right to engage in collective bargaining or to require public employers to grant recognition for the purposes of collective bargaining, it is clear that Congress does not have the authority under Section 5 of the Fourteenth Amendment to enact legislation such as H.R. 980. To paraphrase from the Supreme Court’s decision in Kimel v. Florida Board of Regents, “\* \* \* the substantive requirements \* \* \* [that H.R. 980] imposes on state and local governments are disproportionate to any constitutional conduct that conceivably could be targeted by the Act.”<sup>40</sup>

While the unconstitutionality of H.R. 980’s coverage of units of local government is not as unequivocal as it is with respect to states, the coverage of units of local government would raise serious constitutional issues. Given the expressed views of the majority in all of the Supreme Court cases cited above, it is entirely probable that this five-member majority will some day return to the principles articulated in National League of Cities v. Usery<sup>41</sup> in which the Supreme Court held that Congress did not have the authority to extend the provisions of the Fair Labor Standards Act to states and units of local government under the Commerce Clause. In his plurality decision for the Court, then Justice Rehnquist emphasized “the essential role of the States in our Federal system of government,”<sup>42</sup> and noted:

One undoubted attribute of state sovereignty is the States’ power to determine the wages which shall be paid to those whom they employ in order to carry out their governmental functions, what hours those employees will work, and what compensation will be provided when these employees may be called upon to work overtime. \* \* \*<sup>43</sup>

Justice Rehnquist also noted that the FLSA’s “congressionally imposed displacement of State decisions may substantially restructure traditional ways in which the local governments have arranged their affairs.”<sup>44</sup> There is absolutely no doubt in

my mind that the effect and impact that the Court found to be beyond the power of Congress under the Commerce Clause in National League of Cities would be magnified many times over if H.R. 980 were enacted.

While National League of Cities was overruled in 1985 in *Garcia v. San Antonio Metropolitan Transit Authority*,<sup>45</sup> the strongly worded dissenting opinions of both Justice Rehnquist and Justice O'Connor suggest that the Supreme Court may well return to the constitutional principles articulated in National League of Cities. Since the constitutional rationale espoused by the Supreme Court majority in cases such as Seminole, Lopez, and Kimel is very close to Justice Rehnquist's rationale in National League of Cities, it is surely not unreasonable to suggest that the Supreme Court may well find H.R. 980's extension of coverage to units of local government to be beyond the power of Congress under the Commerce Clause.<sup>46</sup> Indeed, with H.R. 980's massive displacement of the legislative policy decisions made by state and local governments, only some of which have been discussed above, it would be difficult to find a better vehicle for the Supreme Court to reinstate the rationale of National League of Cities as Chief Justice Rehnquist and Justice O'Connor prophesized the Supreme Court would do someday.<sup>47</sup>

While the Supreme Court has the unquestioned power to determine the limits of the authority of Congress to enact legislation under the Commerce Clause in order to maintain the appropriate balance between federal and state authority, it is important to emphasize that all three branches of government have the responsibility to try to insure that the principles of federalism embodied in the Constitution are maintained and upheld. As Justice Kennedy noted in his concurring opinion in *United States v. Lopez*, “\* \* \* it would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance” and that “[t]he political branches of the Government must fulfill this grave Constitutional obligation if the democratic liberty and the federalism that secures it are to endure.”<sup>48</sup> In upholding the Constitution and the principles of federalism upon which it is based, it is incumbent on Congress to consider the tremendous adverse impact a bill such as H.R. 980 would have on Federal-State relationships.

#### *Conclusion*

Given the substantial constitutional and practical issues posed by H.R. 980, coupled with the overwhelming lack of evidence of any compelling need for Congress to mandate collective bargaining for police officers and firefighters at the state and local level, Congress should not enact legislation in this sensitive area. The existence of 38 state collective bargaining laws at the state and local level covering police officers and/or firefighters, virtually all of which go substantially beyond what Congress has deemed appropriate for police officers and firefighters employed by the federal government, demonstrates that there is absolutely no need for the proposed legislation.

#### ENDNOTES

<sup>1</sup> See Shaw & Clark, “The Need for Public Employee Labor Legislation in Illinois,” 59 Ill. B.J. 628 (1971).

<sup>2</sup> Inexplicably, the standards upon which such rules are to be based do not include any Landrum-Griffin-like provisions concerning the regulation of internal union affairs. This omission is especially puzzling given the widely reported financial mismanagement of several major unions that represent public sector unions.

<sup>3</sup> 29 U.S.C. § 160(a).

<sup>4</sup> Statement of Arvid Anderson, Hearings on H.R. 12532, H.R. 7684, & H.R. 9324 before the Special Subcomm. on Labor of the House Comm. on Education and Labor, 92d Cong., 2d Sess., 404 (1972).

<sup>5</sup> For example, under the NLRA it is firmly established that pension and retirement provisions are mandatory subjects of bargaining. See, e.g., *Inland Steel Co. v. NLRB*, 77 N.L.R.B. 1, enfd' 170 F.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960, 69 S. Ct. 887, 93 L. Ed. 1112 (1949). Similar rulings have been made under public sector collective bargaining laws. See, e.g., *Detroit Police Officers Ass'n v. City of Detroit*, 319 Mich. 44, 214 N.W.2d 803 (1974).

<sup>6</sup> N.Y. Civil Service Law, ch. VII, Art. XIV, § 201(4). Either explicitly or implicitly most states have removed pensions from the scope of negotiations.

<sup>7</sup> Illinois Public Labor Relations Act, 5 ILCS 315/14(i)

<sup>8</sup> Maine State Employees Labor Relations Act, Title 26, Ch. 9-B, Section 1.E (4)(c).

<sup>9</sup> Michigan Constitution, Article XI, Section 5.

<sup>10</sup> Nevada Revised Statutes, Ch. 288.150(3)(a)-(c).

<sup>11</sup> 1961 Task Force Report on Employee-Management Cooperation in the Federal Service, in Labor-Management Relations in the Public Service, Part I, at 14 (H. Robert ed. 1968).

<sup>12</sup> In making this determination, H.R. 980 provides that “the authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected employee organizations.” H.R. 980, Section 4(a)(1). Since it is state laws that may well be invalidated, one can only wonder why are the views of states are being subordinated to the views of organized labor. And,

to make matters worse, H.R. 980 provides that “any final order of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority’s decision was arbitrary and capricious.” H.R. 980, Section 5(c)(1). To suggest that the deck is being stacked again states and local units of government under H.R. 980 is to only state the obvious.

<sup>13</sup> Advisory Commission on Intergovernmental Relations, Labor Management Policies for State and Local Government 113 (1969).

<sup>14</sup> Remarks of Dr. Jacob Seidenberg at the symposium on “Equity and the Public Employer,” Washington, D.C., May 10, 1974, p. 24.

<sup>15</sup> *Truax v. Corrigan*, 257 U.S. 312, 344 (1921) (dissenting opinion).

<sup>16</sup> France, “Laying the Groundwork,” ABA Journal, May 2000, at 40, 42. The person quoted in the excerpt is Michael S. Greve, the author of the excellent book, *Real Federalism: Why it Happens, How it Could Happen* (AEI Press, 1999).

<sup>17</sup> Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin. While most of these state laws cover both police officers and firefighters who are employed at both the state and local level, several are more limited in their coverage. The Nevada law, for example, only covers police officers and firefighters employed by units of local government and does not cover such employees who are employed by the State.

<sup>18</sup> Alabama, Georgia, Idaho, and Wyoming.

<sup>19</sup> Among the states without collective bargaining laws covering either police officers or firefighters but which authorize public employers to grant recognition for purposes of collective bargaining and where such bargaining takes place are Arkansas, Colorado, Louisiana, New Mexico, and West Virginia.

<sup>20</sup> Hirsch & MacPherson, Union Membership and Coverage Database from the CPS, Membership, Coverage, Density and Employment by Occupation, 2006, at <http://www.trinity.edu/bhirsch/unionstats>

<sup>21</sup> *Id.*

<sup>22</sup> General Assembly of North Carolina, Session 2007, Senate Bill 970 entitled “Public Safety Employer-Employee Cooperation Act.”

<sup>23</sup> H.R. 980, Section 2.

<sup>24</sup> 5 U.S.C. § 7103(a)(3) (B), (C), (D), and (H).

<sup>25</sup> Executive Order 12171, 44 F.R. 66565 (Nov. 19, 1979).

<sup>26</sup> Executive Order 13039, 62 F.R. 12529 (Mar. 11, 1997).

<sup>27</sup> Executive Order 12632, 53 F.R. 9852 (Mar. 23, 1988).

<sup>28</sup> 5 U.S.C. § 7103 (14)(c).

<sup>29</sup> For federal employees covered by the Civil Service Reform Act of 1978 and postal employees covered by the National Labor Relations Act, unions are prohibited from negotiating union shop or fair share clauses, but under H.R. 980 the negotiation of such union security clauses would presumably be a mandatory subject of bargaining in states that do not have applicable right-to-work laws

<sup>30</sup> H.R. 980, §3(9).

<sup>31</sup> 517 U.S. 44, 116 S.Ct. 1114 (1996). See also *Kimel v. Florida Board of Regents*, 145 L.Ed.2d 522, 120 S.Ct. 631 (2000).

<sup>32</sup> Although Section 5(c) of H.R. 980 provides for enforcement “through appropriate State courts,” that does not make any difference in terms of a state Eleventh Amendment immunity from suits. In *Alden v. Maine*, 119 S.Ct. 2240 (1999), the Supreme Court held that Congress did not have the authority under the Commerce Clause to subject nonconsenting states to private suits in state courts, noting that “the States’ immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today \* \* \*.” *Id.* at 2246-2247.

<sup>33</sup> 119 S.Ct. 2199 (1999).

<sup>34</sup> 119 S.Ct. at 2206.

<sup>35</sup> *College Savings Bank v. Florida Prepaid Post-Secondary Education Expense Board*, 119 S.Ct. 2219, 2224 (1999).

<sup>36</sup> See, e.g., *Alaniz v. City of San Antonio*, 80 L.R.R.M. 2983 (W.D. Tex. 1971).

<sup>37</sup> 99 S.Ct. 1826 (1979).

<sup>38</sup> *Id.* at 1828.

<sup>39</sup> *Id.* at 1827-1828.

<sup>40</sup> 120 S.Ct. at 645.

<sup>41</sup> 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed. 2d 245 (1976).

<sup>42</sup> 96 S.Ct. at 2474.

<sup>43</sup> *Id.* at 2471.

<sup>44</sup> *Id.* at 2473.

<sup>45</sup> 469 U.S. 528, 105 S.Ct. 1005 (1985).

<sup>46</sup> In 1942, the same year in which the Supreme Court issued what many consider to be its most far reaching decision on the authority of Congress under the Commercial Clause, *Wickard v. Filburn*, 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1942), the National War Labor Board (NWLB), in the course of deciding that it had no jurisdiction over municipal employees, made the following observation in an opinion authored by Wayne Morse:

It has never been suggested that the Federal Government has the power to regulate with respect to the wages, working hours, or conditions of employment of those who are engaged in performing services for the states or their political subdivisions \* \* \*. Any directive order of the National War Labor Board which purported to regulate the wages, the working hours, or the conditions of employment of state or municipal employees would constitute a clear invasion of the sovereign rights of the political subdivisions of local state government.

Among the prestigious members of the NWLB who concurred in this unanimous decision were George Meany, the future President of the AFL-CIO, and George Taylor, the future author of the New York Taylor Law.

<sup>47</sup> In his dissent in Garcia Chief Justice Rehnquist stated that he did “not think it incumbent on those of us in dissent to spell out further the fine points of a principle that will, I am confident, in time again command the support of a majority of this Court.” 105 S. Ct. at 1033. Similarly, Justice O’Connor in her dissent in Garcia said that she shared “Justice rehnquist’s belief that this Court will in time again assume its constitutional responsibility.” 105 S. Ct. 1037.

<sup>48</sup> United States v. Lopez, *supra*, 115 S.Ct. at 1639. In this same concurring opinion, Justice Kennedy further noted that “the federal balance is too essential a part of our Constitutional structure and plays too vital a role in securing freedom for [the Court] to admit inability to intervene when one or the other level of government has tipped the scales too far.” Id.

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Chairman ANDREWS. Thank you very, very much.  
Professor Banks, you are recognized for 5 minutes.

**STATEMENT OF WILLIAM BANKS, PROFESSOR OF LAW,  
SYRACUSE UNIVERSITY**

Mr. BANKS. Good afternoon, Mr. Chairman, Ranking Member Kline, members of the subcommittee. I appreciate the invitation to speak to the subcommittee today, and I will focus on the constitutionality of H.R. 980.

Ordinarily, the constitution reserves to the states the authority to manage labor relations within their borders. Indeed, the virtue of our federal system is on display in the rich variety of approaches to managing labor relations in the 50 states.

For public-sector workers, however, the federal system has denied their full protection and, in some 21 states, their rights to collectively bargain are not fully recognized. Although a principal value of our federal system is to encourage states to find new and creative solutions to policy problems in their state legislative laboratories, all of us know that, at times, that discretion for states to shape their own approaches to policy problems has stood in the way of the protection of important individual rights.

In such situations, the federalism value of state creativity can and should be subordinated to the more compelling federalism value of protecting individual liberties.

In my opinion, Congress has the constitutional authority to enact H.R. 980 under the Commerce Clause, and its enactment would not violate the 10th Amendment. It has been clear since 1937 that Congress may regulate labor-management relations in employment in or affecting interstate commerce.

When Congress extends its commerce-based regulations to public employees and employers, the 10th Amendment has presented an obstacle only when Congress attempts to “commandeer” state or local regulatory processes by requiring states and/or cities to adopt and implement a federal regulatory program.

The Supreme Court’s 1985 decision in Garcia allowed Congress to extend wage and hour protections to state and local workers over the 10th Amendment objections of the city for two reasons that have significance in your consideration of H.R. 980.

First, the court noted that federalism values are especially well protected by the structural guarantees of our government. State and local interests are well represented in our Congress, particularly in the House of Representatives. In other words, if Congress determined that wage and hour protections should be extended to public-sector workers in the states and cities, the representatives

from those districts followed their constituents' policy preferences that public-sector workers should enjoy the minimum-wage maximum-hour protections afforded those in the private sector.

Second, the court recognized that one of the most important purposes of our federal system—ensuring individual liberty—would be advanced by permitting Congress to extend the wage and hour protections.

The court's decisions since Garcia do not call into question Congress's authority to apply generally applicable federal protections, such as wage and hour or collective bargaining rights, to state and local governments. The commandeering problem that caused the court to strike down radioactive waste legislation and the Brady Act extending handgun controls does not taint, in my view, H.R. 980.

This bill does not require state or local governments to enact or implement a federal regulatory program. Instead, H.R. 980 places the onus on federal implementation through the FLRA. If a state chooses not to enact a program that meets federal requirements, the FLRA steps in. In the radioactive waste and Brady Act settings, the legislation did not afford states any such choice. Instead, they were obligated to regulate through state and local mechanisms to achieve the federal policy goals.

I will note briefly one other constitutional objection that has been raised to H.R. 980, the state sovereign immunity protected by the 11th Amendment. Recent decisions of the Supreme Court protect states from suits brought in federal court by citizens of their state or of other states. H.R. 980 creates no right of action for individuals directly and, thus, the bill does not confront those limitations.

In addition, under H.R. 980, in states where the FLRA regulates to ensure collective bargaining, any eventual enforcement of state recalcitrance would be initiated by the agency, not by any individual. Federal agencies are not affected in their litigation against states or cities by the 11th Amendment.

I will conclude my remarks now and would eagerly await any questions you might have. Thank you.

[The statement of Mr. Banks follows:]

**Prepared Statement of William Banks, Professor of Law, Syracuse University**

My name is William Banks. I am a professor of law and professor of public administration at Syracuse University, and I direct its Institute for National Security and Counterterrorism (INSCT). I have expertise in the areas of national and homeland security and counterterrorism, and constitutional law, developed during my thirty years of teaching, writing, and speaking in these fields. I appreciate the invitation to speak to the Subcommittee today, and I will focus on the constitutionality of H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007.

Narrowly, the Constitution reserves to the states the authority to manage labor relations within their borders. Indeed, the virtue of our federal system is on display in the rich variety of approaches to managing labor relations in the fifty states. For public sector state and local workers, however, the federal system has denied their full protection and in some twenty-one states their rights to collectively bargain are not fully recognized. Although a principal value of our federal system is to encourage states to find new and creative solutions to policy problems in their state legislative laboratories, all of us know that, at times, that discretion for states to shape their own approaches to policy problems has stood in the way of the protection of important individual rights. In such situations, the federalism value of state creativity can and should be subordinated to the more compelling federalism value of protecting individual liberties.

In my opinion, Congress has the constitutional authority to enact HR 980 under the Commerce Clause, and its enactment would not violate the Tenth Amendment. It has been clear since 1937 that Congress may regulate labor/management relations in employment in or affecting interstate commerce.<sup>1</sup> Beginning in the same Supreme Court era, the Court acknowledged that Congress has considerable discretion to determine what activities affect interstate commerce, to the extent that it permitted a purely intrastate economic problem, such as local working conditions, to be subject to Commerce Clause regulation, on the theory that the aggregate number of such local incidents might affect interstate commerce.<sup>2</sup>

When Congress extends its commerce-based regulations to public employees and employers, the Tenth Amendment has presented an obstacle only when Congress attempts to “commandeer” state or local regulatory processes, by requiring states and/or cities to adopt and implement a federal regulatory program. The Supreme Court’s 1985 decision in *Garcia v. San Antonio Metropolitan Transit Authority*<sup>3</sup> allowed Congress to extend wage and hour protections to state and local workers, over the Tenth Amendment objections of the city, for two reasons that have significance in your consideration of HR 980. First, the Court noted that federalism values are especially well protected by the structural guarantees of our government—state and local interests are well represented in our Congress, particularly in the House of Representatives. In other words, if Congress determined that wage and hour protections should be extended to public sector workers in the states and cities, the Representatives from those districts followed their constituents’ policy preferences—that public-sector workers should enjoy the minimum wage/maximum hour protections afforded those in the private sector workforce. Second, the Court recognized that one of the most important purposes of our federal system—ensuring individual liberty—would be advanced by permitting Congress to extend the wage and hour protections.

The Court’s decisions since *Garcia* do not call into question Congress’s authority to apply generally applicable federal protections, such as wage and hour or collective bargaining rights, to state and local governments. The “commandeering” problem that caused the Court to strike down radioactive waste legislation and the Brady Act extending handgun controls does not taint HR 980. This bill does not require state or local governments to enact or implement a federal regulatory program. Instead HR 980 places the onus on federal implementation through the Federal Labor Relations Authority (FLRA). If a state chooses not to enact a program that meets federal requirements, the FLRA steps in. In the radioactive waste and Brady Act settings, the legislation did not afford the states with any such choice. Instead they were obligated to regulate through state and local mechanisms to achieve the federal policy goals.

Summing up the Commerce Clause and Tenth Amendment concerns expressed by some, there is no reason to expect that the enactment of HR 980 would be stricken down on either of these grounds. It is true that Congress’s Commerce Clause limits and state and local protections enshrined in the Tenth Amendment are two sides of the same coin. As the Court has recognized, the doctrines in both areas are designed to assure that the values of our federal system are honored. HR 980 is emblematic of federal legislation that furthers the values of federalism by protecting the individual rights of public sector workers. At the same time, the bill does not commandeer state or local government processes. It affords those governments that do not yet provide full collective bargaining rights for public sector workers a reasonable choice—provide the protections in your own way, or step aside and allow the FLRA to do so.

I will note briefly one other constitutional objection that has been raised to HR 980—the states’ sovereign immunity protected by the Eleventh Amendment. Recent decisions of the Supreme Court protect states from suits brought in federal court by citizens of their state or of other states. HR 980 creates no right of action for individuals and thus the bill does not confront those limitations. In addition, under HR 980, in states where the FLRA regulates to ensure collective bargaining, any eventual enforcement of state recalcitrance would be initiated by the FLRA, not by any individual. Federal agencies are not affected in their litigation against states or cities by the Eleventh Amendment.

Allow me to conclude by reminding the Subcommittee of the lessons learned from Hurricane Katrina. The 2006 congressional Failure of Initiative report found wide-

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<sup>1</sup> *NLRB v. Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937) (upholding the National Labor Relations Act).

<sup>2</sup> *U.S. v. Darby*, 312 U.S. 100 (1941) (upholding the Fair Labor Standards Act as applied to a local employer); *Wickard v. Filburn*, 317 U.S. 111 (1942) (upholding federal limits on farm production as applied to a local farmer who grew wheat for family consumption).

<sup>3</sup> 469 U.S. 528 (1985).

spread lack of unity, poor coordination and cooperation, and delayed and duplicative efforts by responders immediately prior to and after landfall of that brutal storm. Command and control was impaired at all levels of government, and state and local emergency response personnel lacked the cohesion across jurisdictions to organize their response activities effectively. The collective bargaining envisioned by HR 980 would help level the playing field for these public sector workers. Although this new benefit would not be a panacea for emergency preparedness and response, it would enhance the cohesion among agencies and across jurisdictions that may well improve the delivery of their critical services.

When National Guard personnel from many different states were deployed to assist in the aftermath of Hurricane Katrina, administration of their work became a major headache for state Governors. Because their forces were activated on state active duty and subject to the rules and entitlements authorized by their home states (including pay and health care benefits, for example), coordination and cooperation among Guard units from different states was soon compromised by the complexities of administration and by the animosity and distrust among some that developed because of their variable economic and health-care situations. In this instance, there was a federal fix: The governors requested that the Secretary of Defense invoke so-called "Title 32 status" for National Guard personnel deployed for Katrina relief, effectively permitting uniform pay and benefits out of the U.S. Treasury, while assuring continuing operational command and control by the governors. In this instance Title 32 is a sort of administrative compromise—deployed personnel are made more uniform in pay and benefits, yet the operation is not federalized in the sense of bringing command under the President as Commander in Chief. HR 980 is, in part, a way to do for first responders what Title 32 does for the National Guard.

Thank you. I will be happy to answer any questions that you may have.

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Chairman ANDREWS. Well, thank you very much.

And I want to thank each of the panelists for very thorough, well-prepared testimony, and I think you have served our debate very, very well.

I will begin, if I would, with Mr. Clark in discussing the concerns you raise about the 11th Amendment and sovereign immunity.

Let's say that we enacted this bill, it became law, and a state that does not have the system that measures up under the criteria in the statute is ordered to bargain in good faith with a union in a city. The defendant in this case is the city government. Plaintiff is a labor organization that feels like it is not being bargained with in good faith.

So, under the provisions of the bill, let's say the authority has not yet petitioned for enforcement of the order. So, under page 11, the right of action provision about an interested party filing suit in a state court of competent jurisdiction—so that the facts are labor organization files suit in the state courts of the defendant's state against a city. The defendant is a city of that state.

Is it your view that the 11th Amendment sovereign immunity would bar that suit?

Mr. CLARK. That issue has already been addressed by the Supreme Court in *Alden v. Maine*, a 1999 decision. The Supreme Court held that Congress did not have the authority under the Commerce Clause to subject non-consenting states to private suits in state courts.

Chairman ANDREWS. Who was the defendant in the *Alden* case? It is the state of Maine, wasn't it?

Mr. CLARK. It was the state of Maine.

Chairman ANDREWS. It wasn't a subdivision of the state of Maine, was it? It wasn't a city?

Mr. CLARK. It was the state of Maine. It was an 11th Amendment—

Chairman ANDREWS. It was the state. Do you think there is a constitutional distinction between a city or subdivision of the state itself?

Mr. CLARK. There is. The 11th Amendment immunity only applies at the state level or to arms of state government.

Chairman ANDREWS. So the Alden case would not be controlling under the facts that I just laid out, would it?

Mr. CLARK. Not for 11th Amendment purposes, but—

Chairman ANDREWS. Okay. Well, that is what I asked you about. I asked you about the 11th Amendment. So is it your position that in the case that I laid out, the 11th Amendment would not bar the claim against the city?

Mr. CLARK. The 11th Amendment has traditionally never been held applicable to cities and municipalities. It is a state immunity, not a local government immunity.

Chairman ANDREWS. Okay. So there is no 11th Amendment problem with the facts that I laid out?

Mr. CLARK. No.

Chairman ANDREWS. Okay. Let's talk about the 10th Amendment. Your position, if I read it correctly, is that this bill would be an unconstitutional intrusion upon the sovereign judgments of a state, the area protected by the 10th Amendment. So, basically, I think you say that the Commerce Clause does not extend as far as this bill would have us extend it. Is that right?

Mr. CLARK. Well, it would be my position that because of the invasive provisions of the act and the massive displacements of policy decisions that the decision of the National League of Cities, I think, would be revisited, and I think there are at least five members of the Supreme Court that would probably view it in that light.

Chairman ANDREWS. But the National League of Cities case found that Congress did have the power, didn't it? Didn't it—

Mr. CLARK. The National League—

Chairman ANDREWS. Didn't it overrule the—

Mr. CLARK. Justice Rehnquist, wrote for the plurality. He said one undoubted attribute of state sovereignty is the state's powers to determine the wages which shall be paid to those who are employed, et cetera, et cetera.

Chairman ANDREWS. With all respect, that is not the majority opinion. Wasn't the decision in the National League of Cities case that the federal regulation did apply against the states in question?

Mr. CLARK. No.

Chairman ANDREWS. Wasn't that the—

Mr. CLARK. No, it held—

Chairman ANDREWS. The Garcia case. Excuse me. I am confusing—

Mr. CLARK. The Garcia case—

Chairman ANDREWS. You are correct. I am confusing this case with Garcia.

Mr. CLARK. Subsequently, the National League of Cities was overruled.

Chairman ANDREWS. Under the Garcia case, the 40-hour work week did apply against the local transportation authority, didn't it?

Mr. CLARK. Yes, 5-4.

Chairman ANDREWS. Okay. As President Bush can tell you, 5-4 gets it done in the Supreme Court.

Mr. CLARK. In that case, that carried the day. Yes, sir.

Chairman ANDREWS. So the point is that when the issue was whether or not imposing the 40-hour work week on a local government unit was okay under the Constitution 10th Amendment, the holding was that it was okay, right?

Mr. CLARK. In Garcia, it was. Yes.

Chairman ANDREWS. So how is imposing standards under collective bargaining different than imposing standards under the 40-hour work week? How is it constitutionally different?

Mr. CLARK. I think the number of policy issues that will be implicated by H.R. 980 are far more intrusive and far more invasive than setting a minimum wage and setting a policy in terms of overtime pay.

Chairman ANDREWS. But minimum wage has a direct—

Mr. CLARK. I mean, we are talking about making decisions—

Chairman ANDREWS. Well, but a minimum wage has a direct financial implication upon a public treasury. It tells you how much you must pay your employees at a minimum. That is pretty intrusive, isn't it?

Mr. CLARK. It is intrusive, but not as intrusive as saying that you have to negotiate and come to an impasse and maybe go to an interested arbitrator before you can lay off employees or negotiating over manning, which tells you how many—

Chairman ANDREWS. Yes, that—

Mr. CLARK [continuing]. Firefighters you have to have on a rig or a piece of equipment.

Chairman ANDREWS. If you read the briefs from Garcia, that sounds an awful lot like the arguments that lost under the Garcia case.

My time has expired. I would yield to my friend from Minnesota for 5 minutes.

Mr. KLINE. Thank you, Mr. Chairman.

Again, thanks to the panel for being here.

I am always fascinated when lawyers talk to lawyers, and it reminds me of why I am not one. [Laughter.]

I was lost after the introduction there. I am trying to understand here, recognizing that I am not a lawyer, proudly, proudly so.

Chairman ANDREWS. You might be one some day. You keep working at it. [Laughter.]

Mr. KLINE. No. No chance. No chance.

I am trying to understand if in states where you already have collective bargaining arrangements—and I am going to start with you, Mr. Clark, but this is sort of for everybody. Under this act, the FLRA would come in and decide if it was good enough. Is that the case, sort of basic English for this thing?

Mr. CLARK. Well, I mean, that is one way of putting it, but I think that is putting it very politely because it says "substantially provides" and then says "shall give to the maximum extent practicable to the views of affected labor organizations," and there are other provisions in the act that say, for example, "It shall not be deemed inconsistent with H.R. 980," for the sole reason that the state's militia are excluded. That suggests to me that if there are

some somewhat minor differences, those minor differences may well result in a state's law being determined to be not as substantially provided in H.R. 980.

Mr. KLINE. Okay. Well, I mean, you raised the question—and perhaps we will give Mr. O'Connor a chance to get at it here in just a minute—about why it is that the union should be given the sort of maximum weight over the elected officials.

Let me just go back. I have an example here that I want to try to sort to the bottom. The state of New York is well-represented. We are very happy to have Officer Nunziato and the chairman sort of.

You can sort of represent New York, at least the river. [Laughter.]

As I understand it, the agreement in New York specifically excludes issues relating to pensions from the scope of mandatory bargaining.

Mr. CLARK. Correct.

Mr. KLINE. So, as a practical matter, what would happen with New York if we were to pass H.R. 980? Do they now have to change their rules, or do they get a checkmark and move on?

Mr. CLARK. The contention probably would be made that the scope of bargaining in New York is narrower than the very broad definition contained in H.R. 980. That would then leave New York with the option of either amending its statute so as to expand the scope of bargaining or be subject to the provisions of the labor relations scheme that will be promulgated by FLRA.

Mr. KLINE. Okay. Thank you.

Well, then I am a little bit confused because now I have to go back to Professor Banks who says that this does not require states to adopt or implement a federal regulatory program. It sounds to me like it does.

New York would have to change, and there we already have the Port Authority of New York and New Jersey, but they would have to change it in order to comply with this regulatory program. Isn't that correct?

Mr. BANKS. I do not think so, Representative Kline, on two grounds here. I think initially the determination about whether New York would be substantially providing the rights and responsibilities would likely not come out short for the state of New York. I think this list of criteria in the bill is broad, a number of different factors would be considered, and a piece relating to pension bargaining would not necessarily exclude New York from being found in full compliance here.

The second point is that the FLRA, once this bill becomes law, will have an opportunity to make regulations to more fully flesh out the criteria that would be utilized to make a determination about whether a state—

Mr. KLINE. Well, I guess then we do not know. The answer to my question is we do not know.

Mr. BANKS. We have no—

Mr. KLINE. We have a distinguished panel here, and there is some disagreement over what this legislation would require, and that is one of the things that we need to be a little bit careful of

on this side of the room when we put something into law, that we sort of know what it is going to do, and I am not sure—

Mr. BANKS. I think that is certainly true, but to answer your point about the state having a choice or being subject to a federal commandeering here, I think it is clear that if there was any change to be made, it would be directed and be subject to FLRA actions, not necessary to the state of New York.

New York could choose, in other words, to have their own program, and if it was found not to be in compliance with this bill, it would be up to the FLRA to step in. It would not be expending state resources, state personnel, the mechanisms of New York State government to get this done necessarily.

Mr. KLINE. I knew there was a reason why I was not a lawyer.  
[Laughter.]

I yield back.

Chairman ANDREWS. Thank you, Mr. Kline.

The chair recognizes the author of the bill, the gentleman from Michigan, Mr. Kildee, for 5 minutes.

Mr. KILDEE. Thank you very much.

Nor am I a lawyer. I am a teacher, but I am a member of the NEA and the American Federation of Teachers, AFL-CIO. I still carry my card.

Let me ask you, Mr. Clark. In your testimony, you say, "Let me emphatically state that I wholeheartedly support collective bargaining in the public sector where a majority of the employees have opted to be represented for the purposes of collective bargaining."

But you have states like Virginia—my home is in Michigan; I have a house in Virginia—and North Carolina where collective bargaining is expressly forbidden.

I can recall my first term down there. Fairfax County, which is kind of an advanced, progressive county, like Michigan, they had collective bargaining for a number of people, including teachers, and then in Richmond, the Virginia Supreme Court said that Fairfax County lacked the authority to have collective bargaining. So they do not have collective bargaining in Fairfax County.

You would have thought, though—this is just my own value judgment—that maybe Fairfax County would have said, "Well, what you have gained through your collective bargaining, you can keep anyway." No, they took it back, even your wages and your working conditions. They took it back, and Fairfax County reverted to the rest of Virginia.

So you say that you do support that. Can you tell me what your organization is currently doing to promote collective bargaining rights in those states and jurisdictions which do not provide collective bargaining rights for their employees?

Mr. CLARK. I can speak on behalf of myself. I authored an article in the mid-1970s entitled, "The Need for Public Sector Collective Bargaining Legislation in Illinois," and lobbied for the enactment of that legislation. That is obviously a decision that needs to be made in each state by those employers in those states as to whether they wish to go in that direction.

You mentioned North Carolina. While doing a little Google search on the cooperation act that we are having a hearing here today on, I came across an act being proposed in North Carolina,

Public Employer-Employee Cooperation Act of 2007, that looks almost exactly like H.R. 980.

My position would be that that is where the debate should take place, at the state level, so they can decide what the needs of the state are and how they should be accommodated in terms of collective bargaining, if it is to be provided.

Mr. KILDEE. Let me ask you. Send some of the Virginians down to North Carolina. You state that you have written an article, but what has your organization done to promote collective bargaining in the state level?

Mr. CLARK. The organization has a number of state affiliates. In almost all of the states where there are affiliates, there are collective bargaining laws, and the organization has worked to try to improve those bargaining laws to make them work for both employers, employees and the unions that represent employees.

Mr. KILDEE. Kevin, you mentioned—Mr. Clark mentioned also that—H.R. 980 would supersede state authority. You believe there is a minor inconsistency with the FLRA. Could you address that?

Mr. O'CONNOR. Thank you, Congressman Kildee.

We strenuously disagree with that analysis. Let me respond on a couple of angles.

Number one, I do not think that the analogy with the NLRA is particularly helpful. I mean, that was passed 6 decades ago. It was a top-down piece of federal legislation. While it had some exemptions for states, it was clearly a federal law that took effect immediately.

Second, I think the language in the bill itself provides that protection. I think “substantially comply” will be very broadly construed.

You know, right now, the FLRA has had decades worth of experience administering a public-sector labor law on the federal level, and on the federal level, quite a few things—pensions, merit system, et cetera—are governed by statute, and FLRA works under a system where anything governed by statute is not subject to bargaining.

So I think it is rather fanciful to suggest that after operating under decades under that premise that they would come in to individual states and actually look at a law, for example the Taylor law in New York, and say, “Pensions are not governed under this. Therefore, the entire statute, you know, will be thrown out,” and they will fiat a federal regulation in there. I do not think that is appropriate.

I think when you also look at the legislation, it says, “terms and conditions of employment.” It does not say, “all terms and conditions of employment.” So I think there is a great deal of latitude there for the FLRA to come in and say, “Where we have public-sector laws working, we are essentially going to grandfather those laws.”

And to respond to the question that Mr. Kline had indicated he wanted to ask about giving weight to the view of public-sector unions with respect to this, I can say almost universally for our partners—we have worked on this issue, as you well know, Mr. Kildee. The current iteration of this bill is well over 12 years old—it is not our desire or anybody’s desire to federalize this process. We

want local law, so, consequently, from our standpoint, we think that the affected public employees will say, "We like our local law, and we are going to keep it."

Chairman ANDREWS. The gentleman's time has expired.

Mr. KILDEE. Thank you very much.

Thank you.

Chairman ANDREWS. Thank you, Mr. Kildee.

The chair recognizes the gentleman from Illinois, Mr. Hare, for 5 minutes.

Mr. HARE. Thank you, Mr. Chairman.

Let me thank my colleague, Congressman Kildee, for a wonderful piece of legislation. I am honored to be a co-sponsor of it, Dale, and we are going to do very well, I predict, when this comes to the floor.

I want to just say this. I wonder where all of us would be if it were not for the fire, police, emergency personnel, correctional officers and the number of people that we have each and every day that we count on to keep us safe.

And I believe you said, Mr. O'Connor, that this bill is really a question of fairness. We have thousands of people that do not have the opportunity to have a collective bargaining agreement or to enter into a collective bargaining agreement, and coming from a labor union myself, I can tell you I know what the benefits can be when you have one and when you are striving to get one.

I wonder, Mr. O'Connor, if you could just answer just a couple of questions. What would this bill do regarding to the New York law that we were talking about, whether the New York law would remain as is, or would this bill change that law or hurt that law or what would it do?

Mr. O'CONNOR. I should also note that I am not an attorney, I am a firefighter, so I am opining from that perspective. [Laughter.]

I think that, you know, based upon the answers that I gave to Mr. Kildee, I think the protections have been in there to really empower the states, that the various examples I gave concerning giving weight to affected employees, substantially comply, not enumerating all terms and conditions of employment—there is an awful lot of wiggle room there, and given the fact how FLRA has administered the federal labor law with the caveats that I pointed out, I think that it would go into a state like New York, say, "Look, pensions are not on the table."

In other states, it could be the promotional system, as Mr. Clark enumerated, in the Michigan constitution, but I do not think they would take such a narrow view that they would say one aspect of bargaining is not permissible under a state constitution or an existing law, and that would invalidate. I just do not see FLRA wanting a power grab to give themselves that kind of authority. I think it is very clear the intent of this is we want 50 separate state laws, and if that does not occur, the hook is the FLRA has an authority to promulgate a regulation.

Mr. HARE. Thank you.

And, Mr. Nunziato, you know, coming from a state that does have the collective bargaining rights for its public safety officers, could you tell us why you believe it is essential to have a collective bargaining agreement in place, and from your perspective, do you

believe that having one strengthens our national security and security in your state in particular?

Mr. NUNZIATO. Well, I am sorry. Could you just repeat that again? I am sorry.

Mr. HARE. And I read it so well. [Laughter.]

Mr. NUNZIATO. Yes, you did.

Mr. HARE. Coming from a state that provides collective bargaining rights for the public employees that you have, public safety officers, can you tell the committee why you believe it is essential to have a collective bargaining agreement, why it is essential to have a collective bargaining agreement in place, and given that, do you believe that having one strengthens not only security there, but national security in general?

Mr. NUNZIATO. Well, with the collective bargaining agreement, any lack in security, anything—lack of manpower, leaving a vulnerable target open—if you have a union behind you, you are more likely to come to the union or make your position aware to your employer.

If you have no rights protecting you, chances are you will not want the backlash from your employer and you will remain silent, and you are talking about nuclear power plants, subway systems. I mean, that is a tremendous risk to take.

Mr. HARE. And lastly, Mr. O'Connor, I am sorry for picking on you here, but both Mr. Reichenberg and Mr. Clark think that H.R. 980 was a federal one-size-fits-all solution, and I was wondering if you would agree with that, and if so, why not?

Mr. O'CONNOR. I do not think anything could be further from the truth. I think that we have crafted this bill over 12 years to give maximum flexibility to the states. The fact that the parameters are drawn so broadly—states have the right to determine the processes for elections—if they want secret ballot elections, which, obviously, is a very hot topic in this committee, they can do so. If they want to have just a mediation process, they can do that.

I think that it is so broadly crafted that it does provide maximum flexibility and states are free to observe that and to enact laws that they think best fit their particular localities.

Mr. HARE. Thank you.

In conclusion, Mr. Chairman, I want to thank both these gentlemen. As I said, I do not know where we would be without you and the other people that we are discussing today, and from my perspective, again, this is about fairness. It is about providing the opportunity if people want to engage in collective bargaining agreements.

You know, we can talk about the legalities of it, but, you know, I am not an attorney either. I am a trade unionist myself. It seems to me that we should be able to sit down and give people the opportunity, if they want, to negotiate a contract to help themselves.

As you said, Mr. Nunziato, for that person that died, for that spouse and for those kids, I think that is incredibly important.

Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you very much.

You know, the committee has jurisdiction over Title VII employment discrimination, and I think there is a lot of discrimination against attorneys going on at this hearing today. [Laughter.]

So I am thinking about our next hearing—  
Mr. KLINE. No more than is deserved.

Chairman ANDREWS [continuing]. Maybe adding attorneys as a protected classification under that. Can I have some help with that? Can I have an amen to that, Mr. Clark?

Okay.

The gentleman from Pennsylvania, Mr. Sestak, is recognized for 5 minutes.

Mr. SESTAK. Thank you, Mr. Chairman.

I was struck by, Mr. Banks, your comment on the constitutionality, the issue of how federalist values protect individual rights, equal individual rights.

I come at this issue from a background of, you know, having served in the military for 31 years, protecting individual rights, but I also was a fire marshal for my first 3½ years in the Navy, so I kind of consider myself a public safety—in the larger term, we, the military and firefighter first responders, are.

It always bemused me to be stationed in Florida, and then be stationed in California and then to be stationed, in between the time I was overseas—in Virginia, to watch the disparity in what my fellow public safety officials had the right to do.

So having the protected on the military side these individual rights and having been one of these public safety officials, even a fire marshal, I come at this as, gosh, I do not understand not having these individual rights, having fought for them overseas and elsewhere for so long, and that is kind of just a comment.

But my question, sir, to you, Mr. Reichenberg, is, as you step aside and take this constitutional issue and place it here, maybe it will go to the Supreme Court or not, although I feel comfortably where I sit on the issue—as I look at your titles of each of your sections and as you spoke and you underlined them in your testimony, it seems like the three or four other prevailing ones you have is: We do not know if this legislation will bring out better cooperative relationships. That does not seem to move me as though why not to do it.

The second one is the state knows best. Again, whether it was the civil rights or the women's right to vote, I mean, it has not always moved me as that is so significant, when you talk about individual rights.

And your third one was the FLRA is a bad agency. I think we could fix that. You know, if something does not work, we can always fix it, is how I went about things in the military. You just did not ignore it.

And the last one was public safety officials. Well, the next step would be teachers, you said. But doesn't this focus us on public safety officials?

Do I have your argument wrong?

Mr. REICHENBERG. First, let me again reiterate that the organizations that I am testifying on behalf of today do support collective bargaining rights. So we are not here to say that we are opposed to collective bargaining.

However, our primary concerns with this legislation focus around whether this is something that Congress should mandate, or is it something that is best decided by state and local governments?

Where state and local governments decide that, we are fully supportive of those efforts. We have a long history of doing that. We have focused a large amount of attention during my tenure on the whole issue of labor-management cooperation. We are strong supporters of labor-management cooperation.

However, we do not necessarily believe that the Congress and the FLRA should determine whether state and local governments enter into collective bargaining agreements, and in terms of whether the other public employee unions would be coming to Congress and saying, "Me too," I would be very surprised, if not shocked, if this law is passed, if, in the next session of Congress, there isn't a bill introduced mandating collective bargaining for teachers and other occupations, and, again, if state and local governments want to mandate, that is where we believe this issue should rightfully be decided.

Mr. SESTAK. But in the past, would you agree that there have been certain times in our nation where the federal government potentially held up a national mirror and said, "We are better than this in ensuring equal rights in areas such as civil rights or women's right to vote." Could this not be the same? I mean, I understand, but is it really a black and white issue on every one? It has proven better in the past to have done it, or am I wrong?

Mr. REICHENBERG. Well, I think that there is a distinction between laws like the Americans with Disabilities Act and Title VII, which is providing protection to individuals that have historically been discriminated against. I think there is a clear distinction in that and the situation with public safety.

I believe that public safety employees, if you look at compensation, if you look at benefits, if you look at pensions, they are certainly more generous than they are in the private sector, and they tend within state and local governments to be more generous, and that is fine. Those are decisions made locally. We are fully supportive of Title VII of ADA, of FLMA. We are one of the few management organizations to actually endorse the Federal Family and Medical Leave Act.

So, yes, but that is providing a floor for rights, and we fully support those. This, in terms of collective bargaining, I do not think you have employees who have been traditionally discriminated against here in terms of public safety employees.

Mr. SESTAK. Mr. Chairman, may I make one final 30-second closing comment?

Chairman ANDREWS. Sure.

Mr. SESTAK. I was struck by your comment "historically discriminated against," is how the federal government has intervened. I cannot ask another question, but I believe it would be right to say that those who could not collectively bargain for however long historically, that we are discriminating against them historically also. I am sorry I cannot ask more, but I would place that in the same category.

Thank you, Mr. Chairman.

Chairman ANDREWS. The gentleman's time has expired.

The chair recognizes the gentlelady from New York, who has had considerable experience with local labor issues as a member of the

city council in the city of New York. The gentlelady is recognized for 5 minutes.

Ms. CLARKE. Thank you so much, Mr. Chair.

I thank each of you for your testimony here today, and I want to just start by stating that I believe that strengthening state and local efforts for collective bargaining for our front-line first responders post-9/11 is an imperative. September 11 has redefined and expands the role of the public safety employee in a way in which none of us could ever have envisioned before.

Just this past weekend, Mr. Chairman, the FBI, the NYPD, the Port Authority Police Department and other law enforcement agencies joined forces to stop a planned terrorism attack on JFK International Airport. The plan called for the explosion of jet fuel reserves at JFK. The jet fuel is delivered to JFK by a series of pipelines which traverses my home district of Brooklyn, New York. By exposing this plot, law enforcement agencies saved countless lives.

These dedicated, hardworking men and women deserve the right to discuss workplace and safety issues with their employer. In fact, statistics show that when first responders can discuss workplace issues with their employers, the results are improved public safety.

For example, firefighters that do not have the right to discuss workplace safety are often twice as likely to die in the line of duty. Civilian fire deaths are 21 percent lower in the states where firefighters and their employers have a mechanism to address fire safety issues. Nine of the top 10 states with the highest civilian fire death rates were non-collective bargaining states.

The federal government already grants the right to collective bargaining to most employees. I support extending this right to courageous first responders who are the public's first line of defense.

Having said that, I would like to ask my first question of Kevin O'Connor, and I would like to ask how are your membership suggestions currently being addressed without collective bargaining rights, and are the employers seeking your suggestions or input into workplace safety issues?

Mr. O'CONNOR. Well, obviously, in collective bargaining states, it is governed by the process that has been described here by all the panelists. So I am going to limit my comments to places where there are non-collective bargaining states.

I cannot sit here and tell you that in every one of those states, there is no cooperation between employers and employees. That would be a fallacy. But, unfortunately, without a structured process, it is a very haphazard process. Some places, input is solicited, but it is solicited when management actually wants to sit down and discuss an issue. If there is an issue that they think is a little bit thorny, by and large, there will not be a cooperative dialogue on it.

There are best case examples. Representative Kildee referenced Fairfax County and his personal knowledge there. Currently, there is a wonderful cooperative policy between the fire chief and the local union, but, in order for them to really discuss anything with the board of supervisors, they have to go through a very round-about process, and it is our contention that it would be much more uniform, much more productive and much more efficient without

imposing any type of financial burden on the local jurisdiction by having a structured process.

That is why the words I chose in my oral statement, I chose them very carefully. This bill mandates a process, not an outcome.

Ms. CLARKE. This question is for Kevin O'Connor and Paul Nunziato. Based on your testimonies, it appears that an organization's morale is affected by their collective bargaining status.

Can you both elaborate on how morale impacts both organizations that have collective bargaining as well as those that do not have collective bargaining privileges?

Mr. NUNZIATO. Well, I can only speak for my association and my police department. We do have collective bargaining. I sit on the equipment meeting with the Port Authority. We discuss all issues of safety and equipment. I cannot imagine not having a collective bargaining agreement to protect our members and myself.

I do not know how the other states—the morale there—I cannot imagine how low it would be without a union behind it to protect your rights and your equipment and safety issues.

Mr. O'CONNOR. I can give an anecdote from the National Capital Region. Here, firefighters and law enforcement officers in the District of Columbia enjoy collective bargaining rights. They also enjoy that in Maryland.

Responses, like the Pentagon during 9/11, brought responders from all three jurisdictions. When the Virginia firefighters go back to their respective jurisdictions, Fairfax being a notable example to the contrary—firefighters in Arlington really did not have an opportunity to sit down and kind of decompress and do a critique of operations in that kind of a structured process, and, in fact, we actually got commentary from some of our leadership and rank-and-file members when they talked to their colleagues in places that do have collective bargaining.

It is particularly a troublesome issue where there is a contiguous nature of jurisdictions, some of which enjoy bargaining, some of which do not.

Chairman ANDREWS. The gentlelady's time has expired. Thank you very much.

I would recognize for his closing comments the ranking member, my friend from Minnesota.

Mr. KLINE. Thank you, Mr. Chairman.

I want to thank the panel members for coming. As we expected, quite an expert panel. It was great to hear from all of you.

It probably would have been even more fun if we could have heard real-world stories from the field from Officer Nunziato and Mr. O'Connor or perhaps some more tax-cutting stories from the mayor. Those are always well-received over here.

But I just want to thank you all for coming. It was a really fine hearing.

And thank you, Mr. Chairman. I yield back.

Chairman ANDREWS. I thank you.

I would like to join with my friend in thanking the witnesses for extraordinarily fine testimony, very thoughtful. You have educated the members of the committee and, I think, done a very, very good job.

We appreciate each of you taking time away from what I know is a very, very busy set of obligations in your careers.

Mayor, you came all the way here from Indiana. We are very, very happy to have you with us.

Officer Nunziato, I did want to mention that we in the New York-New Jersey area are profoundly grateful for the work that the Port Authority Police did in this weekend's events at JFK Airport. We know that you played a central role, along with the FBI and others, in what appears to be an excellent achievement in law enforcement. We are very grateful for that.

The way the committee will proceed is that we will take the testimony, we will review it. I am certain that we will have an attempt to debate probably at the full committee level the pros and cons of the issues that we have heard today.

I think you frame the issue this way: The general rule in American labor law is people have the right to organize and bargain collectively and have a remedy if there is not bargaining in good faith. There is an exception, which exists in the case of some public safety personnel. The issue is whether that exception should continue to exist, whether there is a policy or legal basis for that exception. You have given us, I think, ample food for thought as we debate that question.

I, again, thank the author of the bill, Mr. Kildee, for his persistence over the years in dealing with this.

As per the announcement at the beginning of the hearing, members will have 14 days to submit additional materials for the hearing record. And if there are any follow-up questions, they should be submitted within 7 days.

We, again, thank the witnesses for your participation.

And we stand adjourned.

[Additional materials submitted on behalf of Mr. Andrews follow:]

**STATE RECOGNITION OF PUBLIC SAFETY OFFICERS' COLLECTIVE BARGAINING RIGHTS**

State	Employer must recognize union as exclusive bargaining rep	Right to bargain collectively	Agreement reduced to written contract	Union chosen by majority	Interest impasse mechanism required	Enforced or reviewed thru State Courts	All required employees covered
Alabama .....	N	N		N		N	N (right to form/join applies only to fighters)
Alaska .....	Y	Y	Y	Y	Y (binding arbitration on request of either party)	Y	Y
Arizona .....	N	Y (meet and confer)	N	N	N (some selected political subdivisions may have the authority to enter into agreements, but not all)	N (state employees excluded)	N
Arkansas .....	N	N	N	N			
California .....	Y	Y	Y	Y (non-binding agreement may be submitted to governing body for determination)	No (mediation only by agreement of both parties; allows local ordinances on interest arbitration)	Y	Y
Colorado .....	N	N	N	N			
Connecticut .....	Y	Y	Y	Y	Y (binding arbitration)	Y	Y

Delaware .....	Y (Individual right to present complaints for adjustment)	Y	Y	Y	Y	Y	N (police and fire fighters only; State and political subdivisions are covered, but no EMS)
D.C. ....	Y	Y	Y	Y	Y	Y	
Florida .....	Y (Individual contractual grievances must be permitted)	Y	Y	Y	Y	Y	Yes (issues at impasse are submitted to the employer's legislative body for binding resolution)
Georgia .....	Y	Y	Y	Y (may include duty to reduce to writing)	Y	N	N (fire fighters employed by certain large municipalities only; state is at option of municipality)
Hawaii .....	Y	Y	Y	Y	Y	PPCs expressly reviewable, bargaining unit determinations appear to be subject to state policy favoring judicial review of administrative decisions	Y (State and Counties, Hawaii has no cities)

## STATE RECOGNITION OF PUBLIC SAFETY OFFICERS' COLLECTIVE BARGAINING RIGHTS—Continued

State	Employer must recognize union as exclusive bargaining rep	Right to bargain collectively	Agreement reduced to written contract	Union chosen by majority	Interest impasse mechanism required	Enforced or reviewed thru state courts	All required employees covered
Idaho .....	Y	Y	Y	Y	Y	(no state agency, via declaratory judgment)	N (statute on right to form/join covers all employees, but collective bargaining laws are for fire fighters employed by political subdivisions only—no State employees, no police or EMS)
Illinois (for EMT only units) .....	Y	Y	Y	Y	Y (either party may request mediation; by consent, fact finding)	Y (contract); admin decisions unknown	Y (collectively)
Illinois (for Police, Fire, and PM units) .....	Y	Y	Y	Y	Y (mediation is mandatory; either party may request arbitration)	Y (contract); admin decisions unknown	Y (collectively)
Indiana .....	N	N	N	N	N	N	N
Iowa .....	Y	Y	Y	Y	Y	Y	Y

Kansas .....	Y	Y	Y	Y	Y	Y	Y (admin decisions; contract must be implemented by governing body in the form of law, resolution, ordinance or executive order)
Kentucky .....	N	N	N	N	N	N	N
Louisiana .....	N	N	N	N	N	N	N
Maine .....	Y	Y	Y	Y	Y	Y	Y
Maryland .....	N	N	N	N	N	Y	n/a
Massachusetts .....	Y	Y	Y	Y	Y	Y (admin decisions; arbitration is enforceable via agency)	N (employees of militia or national guard excluded)
Michigan .....	Y	Y	Y	Y	Y	Y	Y
Minnesota .....	Y	Y	Y	Y	Y	Y (mandatory for FFS and Police; via petition to state agency for non-essential employees)	Y
Mississippi .....	N	N	N	N	N	N	N

## STATE RECOGNITION OF PUBLIC SAFETY OFFICERS' COLLECTIVE BARGAINING RIGHTS—Continued

State	Employer must recognize union as exclusive bargaining rep	Right to bargain collectively	Agreement reduced to written contract	Union chosen by majority	Interest impasse mechanism required	Enforced or reviewed thru State Courts	All required employees covered
Missouri .....	Y (implied)	Y (meet and confer)	Y	Y	N	Y	N (police, national guard excluded)
Montana .....	Y	Y	Y	Y	Y	Y	Y
Nebraska .....	Y	Y	Y	Y	Y	Y	N (National Guard and militia excluded)
Nevada .....	Y	Y	Y	Y	Y (different mechanism for EMS-only employees)	Y	N (state employees excluded)
New Hampshire .....	Y	Y	Y	Y	Y (admin decisions; contract unknown)	Y	Y
New Jersey .....	Y	Y	Y	Y	Y (admin decisions; contract unknown)	Y	Y
New Mexico .....	Y	Y	Y	Y	Y (different mechanism for EMS-only employees)	Y	Y
New York .....	Y	Y (except retirement contributions)	Y	Y	Y (see NY PRRB Rules, 4 NYCRR § 201.1 et seq.)	Y	Y

North Carolina .....	N	N	N	N	N	N	n/a
North Dakota .....	N	N	N	N	N	N	Y
Ohio .....	Y	Y	Y	Y	Y	Y	(population of at least 5,000 required)
Oklahoma .....	Y	Y	Y	Y	Y	Y	(admin decisions; contract unknown)
Oregon .....	Y	Y	Y	Y	Y	Y	(\$State, cities, counties, service districts, and municipal corporations)
Pennsylvania .....	Y	Y	Y	Y	Y	Y	Y

## STATE RECOGNITION OF PUBLIC SAFETY OFFICERS' COLLECTIVE BARGAINING RIGHTS—Continued

State	Employer must recognize union as exclusive bargaining rep	Right to bargain collectively	Agreement reduced to written contract	Union chosen by majority	Interest impasse mechanism required	Enforced or reviewed thru state courts	All required employees covered
Rhode Island .....	Y	Y	Y	Y	Y (arbitration awards for city or town fire or police may only be reviewed by writ of certiorari to State Supreme [highest] Court)	Y	Y
South Carolina .....	N	N	N	N	N	N	n/a
South Dakota .....	Y	Y	Y (governing body shall implement [a bargaining] settlement in the form of an agreement which shall be effective only upon approval by resolution of the governing body.)	Y	Y (if approved by governing body)	Y	Y
Tennessee .....	N	N	N	N	N	N	N
Texas .....	Y (conditional on adoption)	Y (conditional on adoption)	Y (conditional on adoption)	Y (conditional on adoption)	Y (conditional on adoption)	Y (conditional on adoption)	N (collective bargaining is prohibited for State employees; FMS-only departments in local governments excluded; statutory protections do not apply without successful referendum)

	Utah .....	Y	Y	N (but implied from text of statute)	Y	Y (via declaratory en- forcement only)	Y (collective bargaining only for municipal fire fighters; other employ- ees have right to form union)
Vermont .....	Y	Y	Y	Y	Y	Y	Y
Virginia .....	N	N	N	N	N	N	N
Washington .....	Y	Y	Y	Y	Y	Y	Y
West Virginia .....	N	N	N	N	N	N	N
Wisconsin .....	Y	Y	Y	Y	Y	Y	Y
Wyoming .....	Y	Y	Y	Y	Y	Y (via declaratory en- forcement only)	N (some political sub- divisions may be ex- cluded from coverage; no police or EMS; no state employees)

\*The Pennsylvania Supreme Court, attempting to resolve dissonant elements of three separate labor relations statutes, concluded that "by imposing that collective bargaining duty in Act No. 111, the Legislature intended that the exclusion of public employers from the definition of 'employer' in the PLIA be *pro tanto* repealed." (*Philadelphia Fire Officers Asso. v. Pennsylvania Labor Relations Bd.*, 369 A.2d 259, 261-262 (Pa. 1977). Thus, police and fire fighters covered by Act 111 are protected in their right to organize under the 1937 Pennsylvania Labor Relations Act. In addition, EMS-only departments, which are not covered by Act 111, are protected under 43 P.S. § 1101.401.

[U.S. Department of Labor news release, dated May 28, 1996]

### **Report Finds Labor Management Cooperation Critical To State and Local Government Success**

A study of 50 public workplaces found that labor-management cooperation and employee participation in the public sector leads to dramatic improvements in quality, costs and delivery of service, the U.S. Department of Labor announced today.

The report, entitled "Working Together for Public Service," details specific service improvements and cost savings that result from cooperation and participation, as well as methods that can be used to bring workplace cooperation to many government services and jurisdictions.

The report was issued by the Task Force on Excellence in State and Local Government Through Labor-Management Cooperation. It was comprised of 14 elected officials, labor leaders and academics and was appointed by Labor Secretary Robert B. Reich and co-chaired by former Governor Jim Florio of New Jersey and Mayor Jerry Abramson of Louisville, Kentucky. The task force was unanimous in the view that public workplaces must change from traditional ways of doing business and move towards workplace cooperation, participation and quality improvement. Further, the task force believes that the public sector offers significant opportunity—far more than is commonly believed—for employee participation and labor-management cooperation.

"It is evident from these findings that employee involvement and labor-management cooperation represent a high-potential strategy for meeting the demands on state and local government. I join the task force in challenging elected officials, union leaders, public employees and administrators to move towards models of workplace participation and cooperation. Some of the most dramatic turnarounds in business performance come from labor-management cooperation and employee participation. We should apply the same lessons to the public sector," said Reich.

Mayor Abramson agreed, stating that by "working together, we can cut red tape that contributes to the public's low opinion of government today. Citizens are our customers, and they deserve the best service we can provide. This report will help those of us in the public sector improve our image by improving our performance in servicing our customers."

Noting that many traditional ways of planning and performing public services are antiquated and not responsive to the needs of communities, Governor Florio commented that, "cumbersome procurement, accounting and civil service rules, authoritarian organizational relationships and labor management confrontation are often part of the landscape, but surely won't serve our communities well anymore. These findings suggest how to break old molds and use some approaches that can actually produce better service."

Also among the report findings: Absenteeism, time loss injuries, and overtime were often reduced significantly. Work schedules and procedures were changed to save time and money and to provide better service. School performance improved, public safety services increased, and vehicle readiness and equipment purchasing were improved to save overtime and other costs and improve the quality of service.

In every case where there was a collective bargaining relationship related to a service-focused partnership, the task force found that there were fewer grievances and contracts were negotiated more quickly. Usually, contracts were shorter, more flexible and focused on service responsibilities.

"Employees usually know the most about how to get a job done. If you create a way for them to be involved, don't rely on top-down approaches, and then combine their talents with the priorities of elected officials, you can find resources you did not know you had and solve problems that have been in the way for years," Reich said.

The report includes examples and detailed discussion of ingredients to creating cooperative workplace arrangements. The appendix lists contacts so that parties interested in pursuing their own improvements can get peer assistance. The report is available on three Internet sites: the U.S. Department of Labor web site, the Martin P. Catherwood Library at the School of Industrial and Labor Relations at Cornell University, and through the Alliance for Reinventing Government's Public Innovator Learning Network.

#### *Some Typical Examples*

- The State of Connecticut and District 1199/New England Health Care Employees (SEIU) set up employee teams to look into safety problems, reducing injuries and saving nearly \$5 million after implementation in only half the department.
- In Peoria, Illinois, a coalition of unions and management worked on a joint committee that stopped the bickering and competition over health coverage, developed

a plan with better benefits and utilization management, and saved \$1.2 million—or almost 20 percent—of expected costs.

- As part of a quality improvement/labor-management partnership, Madison, Wisconsin and AFSCME Local 60 developed a new approach to electrical code enforcement that has improved safety and overall compliance and has electrical contractors complimenting the department. The senior inspector, once known as "Dr. No" is now a well-respected and more satisfied public employee. As a result of a training program developed after consultation with electrical contractors, inspection activity costs \$30,000 a year less.

- At the Foshay School in South Central Los Angeles, drop-outs have gone from 21 percent to 3.5 percent, test scores from the bottom to near the state average. Suspensions have gone from 400 cases to 40, all through a labor-management partnership formed by a new principal and the local head of the United Teachers or Los Angeles. The City of Indianapolis, working with AFSCME Local 3131, as part of a citywide service improvement effort, made substantial improvements in the city's motor vehicle repairs, showing nearly a 25 percent decline in that department's budget and a 90 percent decline in grievances. Rather than annual wage adjustments, the parries agreed during the current contract to a gain-sharing program, where 25 percent of the savings accrued to the employees. Although no bargaining unit employee has lost a job, the city contracts out some services, under ground rules developed with the input of union representatives. Among other things, improvements in cost accounting helped labor and management identify barriers to service improvement.

- In the State of Ohio, probably the most comprehensive effort found at the state level, a state-wide effort in cooperation with the Ohio Civil Service Employees Association is saving hundreds of thousands of dollars annually and engaging labor and management leadership in learning the best quality improvement techniques and applying them to state government.

In Phoenix, Arizona, the management team and representatives of Fire Fighters Local 493 gather each year in a planning retreat to identify service and workplace issues needing attention. Arbitration has not been used there for 10 years.

- The Los Angeles Bureau of Sanitation and SEIU Local 47 have, among other innovations through a joint problem-solving committee, increased vehicle readiness from 75 percent to 94 percent, obtaining a large increase in productivity. The overall labor-management relationship has shifted to a far more positive tone and the next three years looks for a 25 percent budget reduction with no layoffs in the department.

- In Portland, Maine, the city and AFSCME Local 481 worked together through a cold winter to use new approaches and skills to build a community minor league ballpark, millions of dollars below the projected contract cost. Grievances were resolved by a "a walk to center field." The pride and lessons from this high-pressure project has resulted in a complete revamping of the labor-management relationship and a reorientation of almost all public works services into self-managed teams. City workers more often than not beat the estimated private-sector cost of most small construction and repair projects.

#### *Some Additional Interesting Findings*

- In conjunction with a participative program and a labor-management partnership, a "no-layoff," or, at least, a significant employment safety net and retraining program, contributed greatly to creativity in finding cost savings and service improvements.

- Simple forms of training were found to greatly contribute to the improvement of a labor-management relationship by teaching the parties alternatives to traditional bargaining. Investments in training, normally the first budget item cut in hard times, turned out to be important also in teaching workers and managers skills in analyzing and changing service delivery systems and solving other kinds of workplace issues.

- Often, a service-oriented relationship began after a successful attempt to reduce grievances or conflicts over contract terms, or after working together to resolve a specific service problem. The improved trust and better problem-solving skills then were applied to larger service issues. Most successful service partnerships started small, on one issue, or in one department or division, and then spread.

In a brief examination of contracting out, the task force found that cooperative models of workplace cooperation generally got as good or better results than a policy of imposed contracting out, and offered other long term benefits. Contracting out as part of a cooperative relationship was often a useful tool, but not the primary answer to cost and quality of services.

Supervisory and managerial levels were often reduced as a result of participative examination of services for improvements and efficiencies, and there was a far greater use of teams and labor-management committees.

Jurisdictions involved in workplace partnerships where there was a collective bargaining relationship used the features and mechanisms of a collective bargaining relationship to the advantage of service improvement.

Changes and improvements in budgeting, cost accounting, procurement practices and in civil service systems often accompanied successful cooperative partnerships and greatly aided efforts to improve services. Employee involvement contributed centrally to identifying the most important changes and to developing alternatives.

Support and encouragement from national labor, management, neutral and research organizations have and can help spread the use of effective workplace participation and labor-management cooperation aimed at improved service delivery.

Successful cooperative relationships emerged not only from visionary leadership, but often from bitter or difficult relationships or came up around problems that had previously seemed insurmountable.

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[Materials submitted on behalf of Mr. Kline follow:]

FRATERNAL ORDER OF POLICE,  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,  
*April 18, 2007.*

Hon. GEORGE MILLER, *Chairman,*  
Hon. BUCK McKEON, *Ranking Member,*  
*Committee on Education and Labor, U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN MILLER AND RANKING MEMBER McKEON: On behalf of over 600,000 public safety officers across our Nation, we are writing to respectfully request that you approve the Kildee Substitute, and oppose any further amendments to H.R. 980, the Public Safety Employer-Employee Cooperation Act, when it is considered before the Committee on Education and Labor.

The Kildee substitute is the result of bipartisan cooperation, and follows more than a decade of refinements and improvements to the Cooperation Act. We believe it strikes the proper balance between providing important protections to thousands of public safety officers, while respecting the rights of states to determine labor law for public employees. We fear further amendments would jeopardize the careful compromise that has garnered strong, bipartisan support.

Thank you for all your efforts on behalf of the nation's public safety officers. We look forward to working with you on this and other important issues throughout the 110th Congress.

Sincerely,

CHUCK CANTERBURY,

*National President, Fraternal Order of Police.*

HAROLD A. SCHAITBERGER,

*General President, International Association of Fire Fighters.*

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INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,  
*Alexandria, VA, April 18, 2007.*

Hon. BOB ETHERIDGE,  
*U.S. House of Representatives, Washington, DC.*

DEAR REPRESENTATIVE ETHERIDGE: On behalf of the International Association of Chiefs of Police (IACP), I am writing you to express our strong opposition of the Public Safety Employer-Employee Cooperation Act of 2007 (H.R. 980). IACP is the world's oldest and largest association of law enforcement executives, with more than 22,000 members in 100 countries.

Safe streets and safe neighborhoods require well-trained and well-managed police departments that are responsive and accountable to the communities they serve. The IACP believes that the provisions of H.R. 980 would effectively federalize state and local government labor-management relations and as a result, would make these goals harder to achieve.

H.R. 980 seeks to deprive state and local governments of the necessary flexibility to manage their public safety operations in a manner that they choose. By mandating a "one-size fits all" approach to labor-management relations, H.R. 980 ignores the fact that every jurisdiction has unique needs and therefore requires the freedom to manage its public safety workforce in the manner that they have determined to be the most effective.

The IACP believes that H.R. 980 would only harm the efficiency of state and local public safety agencies by forcing them to divert their precious resources from their primary mission of protecting the public and instead use them for collective bargaining administration.

Should you have any questions or require additional information, please do not hesitate to contact our Legislative Affairs Office. The IACP stands ready to assist you in any way possible.

Sincerely,

JOSEPH C. CARTER,  
*President.*

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*June 5, 2007.*

Hon. ROBERT ANDREWS, *Chairman,*  
*Health, Employment, Labor and Pensions Subcommittee, Committee on Education*  
*and Labor, U.S. House of Representatives, Rayburn House Office Building,*  
*Washington, DC.*

DEAR CHAIRMAN ANDREWS: On behalf of the National Association of Counties, I write to express concern with H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007, and request that it be modified so as not to mandate collective bargaining rights for public safety employees.

NACo believes that each state legislature should decide this issue based upon local conditions and circumstances and thus opposes a federal mandate. Currently, 34 states have enacted public sector collective bargaining laws covering both police officers and firefighters. There is no need for a federal mandate which could undermine state and local authority in employment practices and decisions.

NACo respectfully urges modification of this legislation, so as not to hinder public sector employer-employee relations at the state and local level.

LARRY E. NAAKE,  
*Executive Director.*

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Hon. JOHN P. KLINE, *Senior Republican Member,*  
*Health, Employment, Labor and Pensions Subcommittee, Committee on Education*  
*and Labor, U.S. House of Representatives, Rayburn House Office Building,*  
*Washington, DC.*

DEAR REPRESENTATIVE KLINE: Thank you for your June 7, 2007 letter informing me of the status of H.R. 980, the "Public Safety Employer-Employee Cooperation Act of 2007." However, the National Conference of State Legislatures does not have policy on this matter and cannot at this time submit an official position or commentary.

NCSL appreciates your efforts on this issue and would like for you to continue to keep us informed on this and other issues that have an impact on state laws and policies. Please do not hesitate to contact me in NCSL's Washington, D.C. office for further updates on H.R. 980 or to discuss any other issues before the Committee.

Sincerely,

SENATOR LETICIA VAN DE PUTTE,  
*Texas Senate; President, National Conference of State Legislatures.*

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NATIONAL LEAGUE OF CITIES,  
*Washington, DC, June 19, 2007.*

Hon. DALE KILDEE, *Vice Chairman,*  
*Committee on Education and Labor, U.S. House of Representatives Washington, DC.*

DEAR REP. KILDEE: On behalf of the 19,000 cities and towns represented by the National League of Cities (NLC), I write to express our strong opposition to H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007.

It has long been the position of the NLC that the federal government should not undermine municipal autonomy with respect to making fundamental employment decisions by mandating specific working conditions, including collective bargaining.

Currently, 33 states have granted their state and local government employees the right to enter into collective bargaining arrangements. Your legislation would mandate collective bargaining rights for all police, fire and emergency medical workers without regard to state laws or constitutions and establish a precedent for federal interference in all employee-employer relationships in municipal government.

I urge you to modify this legislation, so that it respects the long-standing principal of non-interference in employer-employee relations that has existed among the federal, state and local governments.

If you have any questions about NLC's position with respect to H.R. 980, please contact us.

DONALD J. BORUT,  
*Executive Director.*

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NATIONAL LEAGUE OF CITIES,  
*Washington, DC, June 19, 2007.*

Hon. GEORGE MILLER, *Chairman,*

Hon. HOWARD McKEON, *Ranking Minority Member,*

*Committee on Education and Labor, U.S. House of Representatives Washington, DC.*

DEAR CHAIRMAN MILLER AND RANKING MINORITY MEMBER McKEON: On behalf of the 19,000 cities and towns represented by the National League of Cities (NLC), I write to express our strong opposition to H.R. 980, the Public Safety Employer-Employee Cooperation Act.

It has long been the position of the NLC that the federal government should not undermine municipal autonomy with respect to making fundamental employment decisions by mandating specific working conditions, including collective bargaining. In light of the labor protections provided by state laws, labor agreements, city government civil service systems and municipal personnel procedures, NLC opposes federal legislation which singles out a class of municipal employees for additional protections like those proposed in H.R. 980.

Currently, more than 35 states have granted their state and local government employees the right to enter into collective bargaining arrangements. These states have done so within the framework of their constitutions and state laws. Your legislation would mandate collective bargaining rights for all police, fire and emergency medical workers without regard to state laws or constitutions and establish a precedent for federal interference in all employee-employer relationships in municipal government.

I urge you to modify this legislation, so that it respects the long-standing principal of non-interference in employer-employee relations that has existed among the federal, state and local governments.

If you have any questions about NLC's position with respect to H.R. 980, please contact us.

DONALD J. BORUT,  
*Executive Director.*

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[Whereupon, at 4:34 p.m., the subcommittee was adjourned.]

